Supreme Court, U.S.
FILED
NOV 28 1979
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

October Term, 1979

No. 79-834

AUTOMOBILE DRIVERS & DEMONSTRATORS UNION LOCAL NO. 882, *et al.*,
Appellants,

v.

THE DEPARTMENT OF RETIREMENT SYSTEMS OF THE STATE OF WASHINGTON,
Respondents.

APPEAL FROM THE SUPREME COURT OF THE STATE OF WASHINGTON

JURISDICTIONAL STATEMENT

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JURISDICTIONAL STATEMENT

I.

OPINION DELIVERED IN COURT BELOW

The Washington State Supreme Court delivered an opinion in this case, reversing a trial court judgment obtained by the Plaintiff. *Automobile Drivers and Demonstrators Union Local No. 882 and Port of Seattle Police Officers v. The Department of Retirement Systems*, 92 Wn.2d 415, ... P.2d ..... (August 2, 1979). A full copy of the decision is appended herein as Appendix A.

II.

STATEMENT OF GROUNDS ON WHICH THE JURISDICTION OF THE UNITED STATES SUPREME COURT IS BEING INVOKED

This proceeding was originally commenced before a Washington State administrative agency, the Department of Retirement Systems. Washington has established by statute a statewide retirement system for police officers and firemen employed by various municipal entities within the state, RCW 41.26. Appendix B. The Plaintiff is a labor union representing the police officers employed by the Port of Seattle. The Port of Seattle is a port district which under state statute is a municipal form of government. RCW 53.04.060. Appendix C.

The Department of Retirement Systems, which administers the statewide retirement plan, did not include the Port of Seattle police officers within the plan's coverage. The union and the officers as a group petitioned the Department for inclusion of the Port of Seattle officers within the plan and the petition was denied. The denial was appealed administratively and again the petition was refused. The decision of the Department of Retirement Systems was a final agency decision and petitioners appealed to state superior court pursuant to the Washington Administrative Procedure Act, RCW 34.04.130, Appendix D.

The matter was heard on cross motions for summary judgment on the basis of the administrative record pursuant to Washington Court Rules, C.R. 56, which is analogous to FRCP 56. The union made two principal allegations: A) That the definition section contained within the statute creating the retirement system properly should be construed to include the petitioning Port of Seattle police officers; and B) That if the definition section did not include these police officers within the coverage of the Act, the failure to do so was a denial of equal protection of the laws as guaranteed by the fourteenth amendment to the United States Constitution. Petition for Review of Administrative Order, Appendix E. The trial court granted the union and police officers' motion for summary judgment and directed that they be included within the coverage of the retirement system. Order Granting Petitioner's Motion for Summary Judgment and Denying Respondent's Motion for Summary Judgment, Appendix F. Judgment, Appendix G.

The state took the matter on direct appeal to the State supreme court. The supreme court framed the issues as,

> (1) Does the definition of "law enforcement officer" contained in RCW 41.26.030(3) encompass Port of Seattle police officers?
>
> (2) If the definition contained in RCW 41.26.-030(3) does not include respondents, *does the failure to do so deny individual Port police officers equal protection of the law in violation of the Fourteenth Amendment to the United States Constitution* and Constitution Article I, Section 12?
>
> (Emphasis added.) Appendix A-3.

The supreme court reversed the trial court, finding that the statutory definition does not contemplate inclusion of the Port of Seattle police and that the failure to do so does not render the statute constitutionally defective under the Equal Protection provision. 92 Wn.2d 424. One judge of the court dissented on the grounds that the trial court should be affirmed because the legislative scheme "is ar-

bitrary and irrational and, therefore, is an unconstitutional legislative classification." 92 Wn.2d 430.

The trial court judgment was entered July 11, 1978. The opinion of the Washington state supreme court was filed August 2, 1979 and became the decision terminating review of the Washington state supreme court on August 29, 1979. Mandate, Appendix H. The notice of appeal in this matter was filed in the Washington state supreme court on August 31, 1979, Appendix I.

III.

STATUTORY BASIS OF UNITED STATES SUPREME COURT JURISDICTION

The jurisdiction of the United States Supreme Court is conferred by 28 USC §1257(2), which provides:

> Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:
> . . .
>
> (2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity.

IV.

CASES BELIEVED TO SUSTAIN JURISDICTION

The following cases support a finding of jurisdiction in this matter. *Dahnke-Walker Milling Co. v. Bondurant*, 257 U.S. 282, 42 S. Ct. 106, 66 L.Ed. 239 (1921). *Bantam Books v. Sullivan*, 372 U.S. 58, 83 S. Ct. 631, 9 L.Ed.2d 584 (1963). *Warren Trading Post Co. v. Arizona Tax Commission*, 380 U.S. 685, 85 S. Ct. 1242, 14 L.Ed.2d 165 (1965). *Orr v. Orr*, ... U.S. ....., 99 S. Ct. ....., 59 L.Ed.2d 306 (1979).

V.

STATE STATUTES INVOLVED

The overall statutory framework involved in this litigation is lengthy and complex. The statutes are reproduced in the appendix as previously indicated. However, the litigation focuses on the following subsections of the statute known in Washington as the LEOFF Act: RCW 41.26.010:

> This chapter shall be known and cited as the "Washington Law Enforcement Officers' and Fire Fighters' Retirement System Act."

RCW 41.26.020:

> The purpose of this chapter is to provide for an actuarial reserve system for the payment of death, disability, and retirement benefits to law enforcement officers and fire fighters, and to beneficiaries of such employees, thereby enabling such employees to provide for themselves and their dependents in case of disability or death, and effecting a system of retirement from active duty.

RCW 41.26.030:

> As used in this chapter, unless a different meaning is plainly required by the context:
>
> (1) "Retirement system" means the "Washington law enforcement officers' and fire fighters' retirement system" provided herein.
>
> (2)(a) "Employer" for persons who establish the membership in the retirement system on or before September 30, 1977 means the legislative authority of any city, town, county or district or the elected officials of any municipal corporation that employs any law enforcement officer and/or fire fighter, any authorized association of such municipalities and, except for the purposes of RCW 41.26.150, any labor guild, association or organization, which represents the fire fighters or law enforcement officers of at least

seven cities of over 20,000 population and the membership of each local lodge or division of which is composed of at least sixty percent law enforcement officers or fire fighters as defined in this chapter.

(b) "Employer" for persons who establish membership in the retirement system on or after October 1, 1977, means the legislative authority of any city, town, county, or district or the elected officials of any municipal corporation that employs any law enforcement officer and/or fire fighter.

(3) "Law enforcement officer" means any person who is serving on a full time, fully compensated basis as a county sheriff or deputy sheriff, including sheriffs or deputy sheriffs serving under a different title pursuant to a county charter, city police officer, or town marshal or deputy marshal, with the following qualifications:

(a) No person who is serving in a position that is basically clerical or secretarial in nature and who is not commissioned shall be considered a law enforcement officer;

(b) Only those deputy sheriffs, including those serving under a different title pursuant to county charter, who have successfully completed a civil service examination for deputy sheriff or the equivalent position, where a different title is used, and those persons serving in unclassified positions authorized by RCW 41.14.070 except a private secretary will be considered law enforcement officers;

(c) Only such full time commissioned law enforcement personnel as have been appointed to offices, positions, or ranks in the police department which have been specifically created or otherwise expressly provided for and designated by city charter provision or by ordinance enacted by the legislative body of the city shall be considered city police officers; and

(d) The term "law enforcement officer" also includes the executive secretary of a labor guild, association or organization (which is an employer under RCW 41.26.030(2) as now or hereafter amended) if

such individual has five years previous membership in the retirement system established in chapter 41.20 RCW: Provided, That for persons who establish membership in the retirement system on or after October 1, 1977, the provisions of this subparagraph shall not apply.

(4) "Fire fighter" means:

(a) any person who is serving on a full time, fully compensated basis as a member of a fire department of an employer and who is serving in a position which requires passing a civil service examination for fire fighter, or fireman if this title is used by the department, and who is actively employed as such;

(b) anyone who is actively employed as a full time fire fighter where the fire department does not have a civil service examination;

(c) supervisory fire fighter personnel;

(d) any full time executive secretary of an association of fire protection districts authorized under chapter 52.08 RCW: Provided, That for persons who establish membership in the retirement system on or after October 1, 1977, the provisions of this subparagraph shall not apply;

(e) the executive secretary of a labor guild, association or organization (which is an employer under RCW 41.26.030(2) as now or hereafter amended), if such individual has five years previous membership in a retirement system established in chapter 41.26 or 41.18 RCW: Provided, That for persons who establish membership in the retirement system on or after October 1, 1977, the provisions of this subparagraph shall not apply;

(f) any person who is serving on a full time, fully compensated basis for an employer, as a fire dispatcher, in a department in which, on March 1, 1970, a dispatcher was required to have passed a civil service examination for fireman or fire fighter; and

(g) any person who on March 1, 1970 was employed on a full time, fully compensated basis by an employer, and who on May 21, 1971 was making re-

tirement contributions under the provisions of chapter 41.16 or 41.18 RCW. . . .

(8) "Member" means any fire fighter, law enforcement officer, or other person as would apply under subsections (3) or (4) of this section whose membership is transferred to the Washington law enforcement officers' and fire fighters' retirement system on or after March 1, 1970, and every law enforcement officer and fire fighter who is employed in that capacity on or after such date.

(10) "Employee" means any law enforcement officer or fire fighter as defined in subsections (3) and (4) above.

Revised Code of Washington Annotated, Chapter 41.26, Sections .010 - .030, pp. 573-577, as supplemented in 1978 Pocket Part, pp. 102-104.

VI.

QUESTION PRESENTED BY THE APPEAL

Does the failure of the statute creating the statewide Law Enforcement Officers' and Fire Fighters' pension system to include police officers employed by the Port of Seattle deny those police officers equal protection of the law in violation of the fourteenth amendment to the United States Constitution?

VII.

STATEMENT OF THE CASE

This case commenced as an administrative proceeding before the State of Washington, Department of Retirement Systems. A hearing was held on the question of whether the Port of Seattle police officers should be included in a statewide retirement plan administered by the Department of Retirement Systems and established by state

statute, the aforementioned RCW 41.26. The application for membership had been initiated by the police officers employed by the Port of Seattle police department through the labor organization which represents them for purposes of collective bargaining, Teamster Local 882, the Plaintiff in this litigation. The application was joined in by the employer of the police officers, the Port of Seattle. Administrative Record, letter of Teamsters Local 882 dated July 14, 1976; letter of Port of Seattle dated July 16, 1976. Appendix J and K.

During the hearing held before the administrative tribunal, testimony was given as to the duties of these police officers. Testimony shows that in all particulars the police officers employed by the Port of Seattle have identical duties and responsibilities, training, legal authority and equipment, including firearms, as do other police officers. This fact was accepted by the Department of Retirement Systems and became a final factual finding which has gone unchallenged during these entire proceedings. In the words of the Department of Retirement Systems in its decision and administrative order,

> The Department of Retirement Systems does not dispute the duties of the Port of Seattle police officers and the fact they are identical with deputy sheriffs and city and county police officers performing these similar services.

During the course of the administrative proceedings, (Administrative Order, Appendix L) the union, on behalf of the police officers, raised a constitutional argument, which is referred to in the administrative order. The order refers to the Petitioner's raising the argument that the denial of inclusion in the LEOFF system abridges constitutional rights guaranteed by the fourteenth amendment

to the United States Constitution, but the administrative agency refused to pass on the question as being "beyond the jurisdiction of an administrator of a state agency." Administrative Order, p. 3. Appendix L.

Critical to the understanding of the equal protection argument is one additional conclusion contained in the administrative order,

> It is clear that the Port of Seattle *is a municipal corporation, and employs fire fighters which are entitled to coverage in the law enforcement officers' and fire fighters' retirement system (LEOFF).* (Emphasis added).

Administrative Order. Appendix L.

The retirement system itself is a comprehensive retirement system which provides for the payment of,

> . . . death, disability and retirement benefits to law enforcement officers and fire fighters and to beneficiaries of such employees, thereby enabling such employees to provide for themselves and their dependents in case of disability or death, and effecting a system of retirement from active duty.
> R.C.W. 41.26.020.

The system is funded by a combination of employee, employer, and state general funds. RCW 41.26.080. Appendix B. It provides a comprehensive plan of disability, medical, death and retirement benefits, addressed to the special needs of law enforcement officers and fire fighters. RCW 41.26.090; RCW 41.26.120; RCW 41.26.150.

The union sought review of the administrative agency's adverse decision under the state Administrative Procedure Act by a pleading denominated, "Petition for Review of Administrative Order." Appendix E. In the Petition for Review, the union alleged,

> The decision of the Department is in violation of the Fourteenth Amendment, Section 1, of the United States Constitution . . . in that it denies Petitioners the equal protection of the laws in that Petitioners are law enforcement officers whose duties are identical to police officers by RCW 41.26.
>
> The law enforcement officers' and fire fighters' retirement (LEOFF) Act violates the Fourteenth Amendment, Section 1 of the United States Constitution . . . in that it denies Petitioners equal protection of the laws.
>
> Appendix E-2.

The Petition for Review also alleged that a proper construction of the statute would include the Port of Seattle police officers within its application. The Superior Court ruled that the Port of Seattle police officers should be included within the coverage of the statute, not indicating in its written order the basis of said ruling. The state attorney general appealed the matter to the Washington State Supreme Court. The equal protection issue was discussed extensively in the opinion of the State Supreme Court at 92 Wn.2d 421-424 and in fact the dissent was based entirely on the contention that the state statute violates the fourteenth amendment. 92 Wn.2d 426-430.

VIII.

THE CONSTITUTIONAL QUESTION OF DENIAL OF EQUAL PROTECTION OF THE LAWS PRESENTED BY THIS CASE IS SUBSTANTIAL

On the two preliminary requirements for this matter to be brought properly to the Supreme Court on appeal, there can be no argument. The constitutional issue was timely raised in the state courts as is evidenced by the fact that it was raised at the very outset at the administrative proceeding, was specifically alleged in the pleading which

commenced the action under the Administrative Procedure Act in the Washington superior court, and was argued by both sides as a principal issue of the case. Finally the issue was discussed at length by both the majority and dissenting opinions in the State supreme court's final decision on this matter. While an issue of statutory construction was also involved in the case, the issue of whether or not the statute under attack is invalid as a denial of equal protection remains determinative of the issues in the case.

Because the State supreme court faced the constitutional issue, rejected the contention that the state statute was unconstitutional and upheld the statute, the case is properly before the Supreme Court on appeal under 28 USC §1257(2). *Bantam Books v. Sullivan,* 372 U.S. 58, 83 S. Ct. 631, 9 L.Ed.2d 584 (1963). *Warren Trading Post Co. v. Arizona Tax Commission,* 380 U.S. 685, 85 S. Ct. 1242, 14 L.Ed.2d 165 (1965). *Dahnke-Walker Milling Co. v. Bondurant,* 257 U.S. 282, 42 S. Ct. 106 (1921). *Orr v. Orr,* ..... U.S. ....., 99 S. Ct. ....., 59 L.Ed.2d 306 (1979).

The constitutional argument made by the Plaintiff in the action is substantial. One index of the substantiality of the argument is a close reading of the majority opinion of the Washington State Supreme Court in comparison with the dissent. A brief factual recitation puts the argument into context.

Under the statute being attacked, there are two criteria utilized to determine whether a person is eligible for inclusion and must be included within the statewide LEOFF retirement system. The two criteria are the person's occupation and by whom the person is employed. More specifically, if a person is a police officer or a fire fighter he/she satisfies the occupational requirements. If the

person is employed by a municipal form of government other than the state itself he/she satisfies the employer criteria.

There is one and only one exception. A police officer apparently satisfying the occupational criteria who is employed by a port district and apparently satisfying the municipal employer criteria nevertheless is excluded from the system.

The normal first reaction would be that the state legislature decided, with some rational basis, not to include port districts within the group of qualified municipal employers. That argument fails completely however, due to the fact that the statute likewise requires *firemen employed by the same port district as these Plaintiffs* to participate within the statewide retirement system. In the view of the Plaintiffs, this factual context presents a classic case of arbitrary and irrational classification. The fact that the fire fighters employed by the Port of Seattle but not the policemen employed by the Port of Seattle are included in a statewide, all-encompassing retirement plan for all municipally employed fire fighters and policemen, blunts and refutes each and every argument made by the state court majority as to possible justifications for this statute. Justice Dolliver, in dissent, effectively answered each of the possible justifications raised by the majority. The majority's answer to the conceptual difficulties raised by the inclusion of fire fighters employed by the port district in the pension system was,

> From the standpoint of equal protection, what the legislature may do for fire fighters is of no concern to respondents.

92 Wn.2d 415. Appendix A-8.

It would appear to the Plaintiffs that to dismiss the unconstitutionality contention with that statement is to argue too much. It is precisely the thrust of every equal protection classification argument that the inclusion of a particular class within a statutory framework and the exclusion of an indistinguishable class from that statutory framework renders the statute unconstitutional. Futhermore, the complaint of the Plaintiffs is not what the legislature has done for the fire fighters and not done for them. The point made by virtue of the fact the fire fighters are employed by the Port are included within the statutory scheme is that the legislature did not intend to exclude the port district from the overall class of municipal forms of government. Hence, any arguments raised to justify the exclusion of the Port police on the basis that they are employed by a port district and not by another municipal form of government are empty.

The Plaintiffs have approached their constitutional argument within the limits of the court's present approach to equal protection, sometimes called the two-tier analysis. *Massachusetts Board of Retirement v. Murgia,* 427 U.S. 307, 96 S.Ct. 2562, 49 L.Ed.2d 520 (1976) Marshall J. dissenting, 427 U.S. 317. Furthermore, the Plaintiffs have argued and believe it can be demonstrated to the satisfaction of this court that application of the less rigid "rationality" standard to the statute as opposed to the "strict scrutiny" standard will nonetheless render the conclusion inescapable that this statute is wholly irrational and arbitrary, and even fails the rationality test.

IX.

CONCLUSION

We therefore, in conclusion, suggest that this case is properly before the court on appeal and that it is appropriate for the court's consideration as one which presents a substantial question of constitutionality.

Respectfully submitted this 21st day of November, 1979.

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APPENDIX A

AUTO DRIVERS v. RETIREMENT SYSTEMS

92 Wn.2d 415

The order granting a new trial is affirmed.

ROSELLINI, STAFFORD, WRIGHT, BRACHTENBACH, HOROWITZ, DOLLIVER, and HICKS, JJ., and RYAN, J. Pro Tem., concur.

[No. 45706. En Banc. August 2, 1979.]

AUTOMOBILE DRIVERS & DEMONSTRATORS UNION LOCAL No. 882, ET AL, *Respondents*, v. THE DEPARTMENT OF RETIREMENT SYSTEMS, *Appellant*.

[1] **Pensions—Statutory Provisions—Construction—Beneficiaries.** A party must establish that he is an intended beneficiary of pension legislation before he is entitled to a liberal construction in his favor.

[2] **Statutes—Construction—In General.** A statute will be read as a whole to determine the legislative intent as to the meaning of a particular word. All words will be given meaning, if possible, and the court will not add language it believes has been omitted either intentionally or inadvertently.

[3] **Port Districts—Pensions—Law Enforcement Officers—Port Policemen.** RCW 41.26.030(3), which defines "law enforcement officer" for purposes of retirement systems, does not include police officers employed by a port district within such definition.

[4] **Constitutional Law—Equal Protection—Classifications—Test.** The rational relationship test is applied to determine the validity of legislative classifications which do not affect fundamental rights and are not suspect. Under such test, the legislation must apply uniformly to all persons within a class and reasonable grounds must exist for creation of the classes. A party challenging the validity has the burden of proof and courts will not consider the wisdom of classifications,

but will uphold them if any state of facts may reasonably exist to support them.

[5] **Pensions—Classifications—Law Enforcement Officers—Firefighters.** The legislative purpose stated in RCW 41.26.020 to provide a single retirement system for law enforcement officers and firefighters does not mandate against separate classifications for the two groups for any purpose.

[6] **Pensions—Classifications—Law Enforcement Officers—Port Districts.** Reasonable grounds exist for the legislative classification in RCW 41.26 which includes city and county police officers in the LEOFF retirement system but excludes port district police officers.

WRIGHT, J., concurs by separate opinion; DOLLIVER, J., dissents by separate opinion.

Nature of Action: A union representing the police officers of a port district sought review of a determination of the Department of Retirement Systems that the police officers were not entitled to membership in the LEOFF retirement system.

Superior Court: The Superior Court for King County, No. 835730, Horton Smith, J., granted a summary judgment on July 11, 1978, directing the officers' inclusion in the retirement system.

Supreme Court: Holding that the applicable statute did not include the officers as beneficiaries of the system, and that there was no denial of equal protection, the court *reverses* the judgment.

Slade Gorton, Attorney General, and *Wayne L. Williams* and *Matt Coyle, Assistants,* for appellant.

Herman L. Wacker and *Vance, Davies, Roberts, Reid & Anderson,* for respondents.

HICKS, J.—This is a direct appeal from a King County Superior Court judgment pursuant to RAP 4.2(a)(2). The Department of Retirement Systems (Department) seeks review of a decision declaring RCW 41.26.030(3), which defines the term "law enforcement officer" to be unconsti-

tutional insofar as it excludes Port of Seattle (Port) police officers from the Law Enforcement Officers' and Fire Fighters' Retirement System (LEOFF). We reverse.

Respondent, Automobile Drivers & Demonstrators Union Local No. 882, is the collective bargaining representative for Port police officers. The jurisdiction of the Port police is coextensive with Port-owned property and includes Sea-Tac Airport and the Seattle waterfront. The Port police force presently numbers approximately 80 to 90 officers.

July 14, 1976, the union and its Port police members petitioned for admission of the Port police to the LEOFF retirement system established under RCW 41.26. March 1, 1977, the Department denied the petition. Respondents sought an administrative appeal pursuant to RCW 41.26-.210. A formal hearing was held on July 22, 1977, before the assistant director of the Department. The Department did not dispute that the duties of Port police officers were "identical" with deputy sheriffs and city and county police officers. The hearing officer concluded, however, that Port police officers were not "law enforcement officers" encompassed within the definition of RCW 41.26.030(3), thus not entitled to membership in LEOFF.

Pursuant to RCW 34.04.130 of the state administrative procedures act, proceedings were brought before the King County Superior Court. The Port police officers and their union claimed the administrative decision was erroneous as a matter of law. June 8, 1978, a hearing was held on cross motions for summary judgment. July 11, 1978, the court granted respondents' motion for summary judgment and denied the Department's motion. The Superior Court ordered the Department to admit the Port police officers into LEOFF, effective either January 1, 1972, or alternatively the first date thereafter for which they qualified.

We believe the issues to be resolved are: (1) Does the definition of "law enforcement officer" contained in RCW 41.26.030(3) encompass Port of Seattle police officers? and (2) If the definition contained in RCW 41.26.030(3) does not include respondents, does the failure to do so deny individual Port police officers equal protection of the law in violation of the fourteenth amendment to the United States Constitution and Const. art. 1, § 12?

I

The Department acknowledges that the issues are purely legal; there are no disputed facts. The first issue is one of statutory construction. Do respondent Port police officers meet the statutory definition of "law enforcement officer", thus entitling them to coverage under RCW 41.26? RCW 14.08.120(2) authorizes municipalities with airports to appoint airport guards or police. Effective in 1974, RCW 53.08.280 extended to properly trained port police officers full police powers to enforce all applicable federal, state and municipal statutes, ordinances, rules and regulations on Port-owned or operated properties.

The LEOFF system became effective in March 1970. The legislative purpose of the system is set forth in RCW 41.26-.020 as follows:

> The purpose of this chapter is to provide for an actuarial reserve system for the payment of death, disability, and retirement benefits to law enforcement officers and fire fighters, and to beneficiaries of such employees, thereby enabling such employees to provide for themselves and their dependents in case of disability or death, and effecting a system of retirement from active duty.

The Port police department was created in 1972, subsequent to enactment of the LEOFF enabling act. Effective April 1975, the Port police department became a recognized law enforcement agency with full police powers.

[1] Pension legislation is to be liberally construed in favor of the beneficiaries. *Hanson v. Seattle*, 80 Wn.2d 242, 493 P.2d 775 (1972). The issue in this case, however, is whether respondents are intended beneficiaries under RCW 41.26. The statutory definition section, RCW 41.26.030, defines "employer"[1] and "law enforcement officer" for use in the chapter as follows:

> (2)(a) "Employer" . . . means *the legislative authority of any city, town,* county or district *or the elected officials of any municipal corporation that employs any law enforcement officer* and/or fire fighter, any authorized association of such municipalities, and, except for the

1. Amendments to the statutory definition of "employer" do not affect the outcome of the instant case. Laws of 1977, 1st Ex. Sess., ch. 294, § 17.

> purposes of RCW 41.26.150, any labor guild, association, or organization, which represents the fire fighters or law enforcement officers of at least seven cities of over 20,000 population and the membership of each local lodge or division . . which is composed of at least sixty percent law enforcement officers or fire fighters as defined in this chapter.
>
> . . .
>
> (3) "Law enforcement officer" means *any person who is serving on a full time, fully compensated basis as* a county sheriff or deputy sheriff, including sheriffs or deputy sheriffs serving under a different title pursuant to a county charter, *city police officer,* or town marshal or deputy marshal, with the following qualifications:
>
> . . .
>
> (c) *Only such full time commissioned law enforcement personnel as have been appointed to offices,* positions, or rank in the police department which have been specifically created or otherwise expressly provided for and designated *by city charter provision or by ordinance enacted by the legislative body of the city shall be considered city police officers* . . .

(Italics ours.)

Respondents argue that Port police are "city" police officers under RCW 41.26.030(3). They reach this conclusion by interpreting the words "city" and "municipal" as interchangeable. *See State ex rel. O'Connell v. Port of Seattle*, 65 Wn.2d 801, 803, 399 P.2d 623 (1965). Thus, they reason, the inclusion of city police in the definition of law enforcement officer in this statute encompasses municipal (*i.e.*, port district) police.

It is clear that the Port is a municipal corporation. The legislature has explicitly described port districts as "municipal corporations." RCW 53.04.060. *See also Port of Seattle v. International Longshoremen's & Warehousemen's Union*, 52 Wn.2d 317, 324 P.2d 1099 (1958). It is undisputed that Port fire fighters are included in LEOFF under the statutory definition of "fire fighters". The problem presented here, however, involves the definition of "law enforcement officer" under RCW 41.26.030(3). The Department argues that the "plain wording" of RCW 41.26-.030(3) excludes respondents from membership in LEOFF.

[2, 3] A basic rule of statutory construction is that when the language of a statute is clear and unambiguous, there is no room for judicial interpretation. *Roza Irrigation Dist. v. State,* 80 Wn.2d 633, 497 P.2d 166 (1972). Here, however, there is disagreement as to the meaning of the term "city" police officer in the context of the definition of "law enforcement officer" for the purpose of inclusion in the LEOFF system. To ascertain legislative intent, the statutory scheme as a whole should be examined. *Hartman v. State Game Comm'n,* 85 Wn.2d 176, 532 P.2d 614 (1975).

Under the act, "fire fighter" is statutorily defined as any person "serving on a full time, fully compensated basis as a member of a fire department of an *employer*". (Italics ours.) RCW 41.26.030(4). "Employer" is defined as the "legislative authority of any *city,* town, county or district *or* the elected officials of any *municipal corporation*". (Italics ours.) RCW 41.26.030(2)(a). Thus, port fire fighters, as employees of a municipal corporation, are covered under LEOFF.

In contrast with the definition of "fire fighter", the statutory definition of "law enforcement officer" makes no reference to "employer." Instead, RCW 41.26.030(3) specifically defines law enforcement officer as county sheriff, deputy sheriff, city police officer, town marshal or deputy marshal. The Department invokes the rule that the clear expression of one thing in the statute, (*i.e.,* county sheriffs, city police officers, etc.) excludes those not expressed (port district police). *Dominick v. Christensen,* 87 Wn.2d 25, 548 P.2d 541 (1976). Respondents urge the court to read the words "port district" or "municipal corporation" into the definition of law enforcement officer.

We note that the LEOFF statutes were enacted prior to the statutory authorization of port police departments with full police powers. Nevertheless, the definition of law enforcement officer has been subsequently amended without including "port police officers" or police employed by municipal corporations. The precise issue has been raised before the Department several times. In addition, a bill was introduced in the 1977 legislature to expressly include port police officers in LEOFF, but no action was taken. House Bill 490, House Journal, 45th Legislature (1977), at 141.

The definition of "employer" includes cities and municipal corporations. If the two terms are used synonymously under the act, there would be no reason to include both. The legislature is presumed not to have used superfluous words. *State v. Fenter,* 89 Wn.2d 57, 60, 569 P.2d 67 (1977). If the legislature intended to include police employed by municipal corporations, it could have defined "law enforcement officer" in the same manner as "fire fighter" by refering to "employer." It did not do so. This court cannot read into a statute that which it may believe the legislature has omitted, be it an intentional or inadvertent omission. *Jepson v. Department of Labor & Indus.,* 89 Wn.2d 394, 573 P.2d 10 (1977).

Finally, to be considered "city police officers" under the statute, respondents must also meet the qualifications set forth in RCW 41.26.030(3)(c), *i.e.,* appointed to offices provided for or designated by "city charter provision" or by "ordinance" enacted by the legislative body of a *city.* In the instant case, the Port police department was apparently created by resolution of the Port commission, the legislative authority of the Port district.

We conclude that the legislature has not included port police officers within the definition of "law enforcement officer" under LEOFF.

II

Respondents argue that if the statute excludes them from LEOFF, they are denied equal protection under the fourteenth amendment to the United States Constitution and Const. art. 1, § 12.

[4] At the outset, we note that a statute which does not affect fundamental rights or create a suspect classification will not be invalidated unless it rests on grounds wholly irrelevant to the achievement of a legitimate state objective. *Nielsen v. Washington State Bar Ass'n,* 90 Wn.2d 818, 820, 585 P.2d 1191 (1978), citing *McGowan v. Maryland,* 366 U.S. 420, 425-26, 6 L. Ed. 2d 393, 81 S. Ct. 1101 (1961). No fundamental right is at stake in this case. The rational relationship standard of equal protection analysis is the appropriate test to be applied. All persons need not be treated alike under that standard. It is sufficient if (1) the legislation applies alike to all persons within the designated

class; and (2) reasonable grounds exist for distinguishing between those who fall within and those without the class. *Moran v. State,* 88 Wn.2d 867, 568 P.2d 758 (1977).

The legislature has broad discretion in creating classifications in social and economic legislation; a classification will be upheld if any state of facts may reasonably be conceived to substantiate it. *McGowan v. Maryland, supra.* The wisdom of a legislative classification is not subject to our review. And a statute is presumed to be constitutionally valid and the burden is on the challenger to prove that a classification does not rest on a reasonable basis. *State v. Devine,* 84 Wn.2d 467, 470, 527 P.2d 72 (1974).

With these precepts in mind, we consider the constitutional challenge made in this instance. Respondents place great reliance on the fact that fire fighters employed by the Port are included in LEOFF. They reason that since Port fire fighters are included in LEOFF and Port police officers are not, the pension system which includes the one (fire fighters) and excludes the other (police) is without reason and, consequently, arbitrary. An arbitrary selection for inclusion in the system cannot stand.

[5] As set forth in RCW 41.26.020:

> The purpose of this chapter is to provide for an actuarial reserve system for the payment of death, disability, and retirement benefits to law enforcement officers and fire fighters . . . and effecting a system of retirement from active duty.

Manifestly, the legislature may separately classify law enforcement officers and fire fighters. That the statutory objective is the same for both groups and is sought to be achieved by a single pension system does not militate against the classifications. From the standpoint of equal protection, what the legislature may do for fire fighters is of no concern to respondents. To prevail on their equal protection contention, Port police must demonstrate that their exclusion from the classification of law enforcement officer was arbitrary or furthered no purpose of the act.

Following a hearing before a Department hearing examiner, an administrative appeal to the Director of the Department of Retirement Systems was taken by the Port

police officers. In the course of the written ruling, the Director stated: "The Department of Retirement Systems does not dispute the duties of the Port of Seattle police officers and the fact that they are identical with deputy sheriffs and city and county police officers performing these similar services." For purposes of review, this statement establishes identity of duties as a fact of this case.

[6] The relevant inquiry then is whether reasonable grounds may be conceived for distinguishing between police officers who fall within the statutory definition of "law enforcement officer" and port police officers, performing functionally identical duties, who do not. On such ground may be the solvency and integrity of the LEOFF fund. When the state administers a finite fund, a statutory discrimination will not be set aside if any state of facts can reasonably be conceived to justify it. *Caughey v. Employment Security Dep't,* 81 Wn.2d 597, 599, 503 P.2d 460, 56 A.L.R.3d 513 (1972). At the time of the creation of the LEOFF system in 1970, there were no port police who had "identical" duties with other police officers. Port police were fully empowered as police officers by the legislature several years later. By that time, legislative experience with the funding of LEOFF may well have prompted the legislature to exclude port police. The fact that port districts have authority to establish their own pension and retirement system (RCW 53.08.170), may have been considered by the legislature as making it unnecessary to include port police in LEOFF at the time of their full empowerment as police officers.

The jurisdiction of county and city law enforcement officers includes port properties within county or city boundaries. RCW 36.28.010 and .020. Port police jurisdiction is restricted to port properties. RCW 53.08.280. Thus, while their functional duties may be "identical" with city and county police officers, port police territorial area of responsibilty is not "identical".

The Department points to a number of distinctions between Port police and city and county police. For example, city and county police are covered by civil service laws; Port police are not. Respondents contend that most of the distinctions claimed by the Department are ultimately based upon the status of port police as employees of port

districts. Such distinctions, respondents argue, must fail because the legislature did not deem it relevant for purposes of including port fire fighters in LEOFF. As we have indicated above, we disagree with this contention. What the legislature chose to do about fire fighters at one point in time is not constitutionally controlling as to what it must do in the way of classification of port police officers several years later.

Respondents have failed to satisfy their heavy burden of proof that the classification is manifestly arbitrary, unreasonable, inequitable and unjust. *Childers v. Childers,* 89 Wn.2d 592, 604-05, 575 P.2d 201 (1978). We hold that RCW 41.26.030(3) does not violate respondents' equal protection rights.

Reversed.

UTTER, C.J., and ROSELLINI, STAFFORD, BRACHTENBACH, HOROWITZ, and WILLIAMS, JJ., concur.

WRIGHT, J. (concurring)—I concur with the majority. This action involves application and interpretation of a statute. RCW 41.26.030(3).

While it is true the legislature could have used the word "municipal" rather than the word "city", the legislature did not do so. The word "municipal" includes cities. The word "city", however, does not include all municipalities. The word "municipal" is broader than the word "city". *State ex rel. Griffiths v. Superior Court,* 177 Wash. 619, 621-22, 33 P.2d 94 (1934).

The language here is clear. If the language of a statute is clear and unambiguous there is no proper place for construction. *State v. Roth,* 78 Wn.2d 711, 714, 479 P.2d 55 (1971); *State ex. rel. Hagan v. Chinook Hotel, Inc.,* 65 Wn.2d 573, 578-80, 399 P.2d 8 (1965); *State v. Spino,* 61 Wn.2d 246, 248-49, 377 P.2d 868 (1963); *State v. Houck,* 32 Wn.2d 681, 684, 203 P.2d 693 (1949); *Shelton Hotel Co. v. Bates,* 4 Wn.2d 498, 507, 104 P.2d 478 (1940).

It is not a judicial function to add words to a statute even if it appears the omission was a legislative oversight. *Jepson v. Department of Labor & Indus.,* 89 Wn.2d 394, 403, 573 P.2d 10 (1977); *State v. Rochelle,* 11 Wn. App. 887, 890, 527 P.2d 87 (1974); *Knowles v. Holly,* 82 Wn.2d

694, 703, 513 P.2d 18 (1973). The trial court erred because the remedy granted violates this principle of statutory construction. A court may not add to a statute, even if that addition seems necessary to make the statute constitutional. We said in *Orians v. James,* 84 Wn.2d 819, 529 P.2d 1063 (1974): "To say that the law does not mean what it plainly states because it has been judicially interpreted to mean something else . . . is in fact illogical." *Orians v. James, supra* at 822. That case dealt with *limiting* the application of a statute. How much more illogical is it to extend the operation of a statute?

I agree with the majority that the classification excluding Port police from the LEOFF retirement system is valid. I have, however, added the foregoing to state that an additional reason the trial court must be reversed is because the remedy so selected is impermissible.

For the reasons stated by the majority and for the additional reason stated herein, I would reverse.

DOLLIVER, J. (dissenting)—I agree with the majority's position as to RCW 41.26.030(3); I do not agree with its views on equal protection or the application of this constitutional guaranty to the Port police.

The principle of equal protection does not require that things different in fact be treated in law as though they were the same. It does require, however, that those who are similarly situated be similarly treated. Tussman & ten-Broek, *The Equal Protection of the Laws,* 37 Cal. L. Rev. 341 (1949); *Jenkins v. State,* 85 Wn.2d 883, 540 P.2d 1363 (1975). When a statute provides that one class is to receive different treatment from another, equal protection guaranties require that: (1) the legislation must apply alike to all persons within the designated class; and (2) reasonable grounds must exist for making a distinction between those who fall within the class and those who do not. *Belancsik v. Overlake Memorial Hosp.,* 80 Wn.2d 111, 492 P.2d 219 (1971); *Jenkins v. State, supra; Rinaldi v. Yeager,* 384 U.S. 305, 16 L. Ed. 2d 577, 86 S. Ct. 1497 (1966). The equal protection clause of the Fourteenth Amendment denies to states the power to legislate that different treatment be accorded to persons placed by a statute into different classes on the basis of criteria wholly unrelated to the

objective of that statute. *Reed v. Reed,* 404 U.S. 71, 30 L. Ed. 2d 225, 92 S. Ct. 251 (1971); *F.S. Royster Guano Co. v. Virginia,* 253 U.S. 412, 64 L. Ed. 989, 40 S. Ct. 560 (1920).

I believe the exclusion of the Port police from the LEOFF system is irrational: persons similarly situated are being dissimilarly treated and the reasons given by the majority for excluding Port police from LEOFF are based on criteria wholly unrelated to the objectives of the LEOFF statute.

The majority relies on four grounds for asserting there is a rational exclusion of the Port police from LEOFF: (1) "the solvency and integrity of the LEOFF fund"; (2) the "port police territorial area of responsibility is not 'identical' [with city and county police officers]"; (3) "city and county police are covered by civil service laws; Port police are not"; and (4) "port districts have authority to establish their own pension and retirement system". Not one of these reasons stands up under careful scrutiny.

On the matter of the solvency and integrity of the LEOFF fund, the majority cites *Caughey v. Employment Security Dep't,* 81 Wn.2d 597, 599, 503 P.2d 460, 56 A.L.R.3d 513 (1972), and states: "When the state administers a finite fund, a statutory discrimination will not be set aside if any state of facts can reasonably be conceived to justify it." The majority neither argues nor demonstrates the inclusion of the Port police presents a danger to LEOFF. The *Caughey* court relied on *Dandridge v. Williams,* 397 U.S. 471, 25 L. Ed. 2d 491, 90 S. Ct. 1153 (1970). Except in the fantasies of children, all funds are, of course, finite—*i.e.,* "having definite or definable limits or boundaries". *Webster's Third New Int'l Dictionary* (1971). The sort of calculus urged by the majority would allow legislators to pick and choose classifications with impunity, secure in the knowledge that if any fund was involved they could point to it as being a "finite fund".

Yet an analysis of *Dandridge* and *Caughey* indicates the courts had considered factors other than the simple finitude of funds in holding equal protection inapplicable. Those factors distinguish *Dandridge* and *Caughey* from the case at hand. In neither *Dandridge* nor *Caughey* did the claimed recipients contribute directly to the "fund" from which

payments were demanded. *Dandridge* involved public welfare moneys; the *Caughey* claim was for unemployment benefits. *See* RCW 50.24.010. Nor were the claimants required to subscribe to the public welfare or employment benefits systems. In contrast, fire fighters and law enforcement personnel must belong to LEOFF (RCW 41.26.040), and each member is required to pay a certain sum into the pension system. RCW 41.26.080. *See also* RCW 41.26.085.

Finally, the holding in *Dandridge,* on which the *Caughey* court relied, is not based on the finite character of the fund. Rather, the Supreme Court said:

> We need not explore all the reasons that the State advances in justification of the regulation. It is enough that a solid foundation for the regulation can be found in the State's legitimate interest in encouraging employment and in avoiding discrimination between welfare famlies and the families of the working poor. By combining a limit on the recipient's grant with permission to retain money earned, without reduction in the amount of the grant, Maryland provides an incentive to seek gainful employment. And by keying the maximum family AFDC grants to the minimum wage a steadily employed head of a household receives, the State maintains some semblance of an equitable balance between families on welfare and those supported by an employed breadwinner.

(Footnote omitted.) *Dandridge,* at 486. The finite character of LEOFF is not an adequate bar to membership by persons similarly situated and does not overcome the requirements of equal protection.

The second ground is that the territorial responsibility of Port police is not identical with city and county police officers, yet the majority concedes the duties of the Seattle Port police are identical with the duties of city and county police. *See* RCW 53.08.280. The fact that county and city police may have overlapping jurisdictions with the Port as well as a wider jurisdiction on Port property is irrelevant. County sheriffs have similar overlapping jurisdictions with city police. It hardly can be contended seriously this distinction in and of itself would permit the legislature to bar city police from LEOFF. The classification must be rational. This classification is not.

Next, the majority claims that county and city police are under civil service and the Port police are not, and that this is a sufficient distinction. Without discussing whether the basic proposition is a reasonable classification, the fact is that *not all* police officers who are covered by LEOFF are required to be under civil service. While most deputy sheriffs must be under civil service to qualify for LEOFF, there are a number of exceptions. *See* RCW 41.26.030(3)(b). In Class A and Class AA counties, the undersheriff, inspector, chief criminal deputy, chief civil deputy, and jail superintendent are exempt from civil service; in first-, second- and third-class counties three positions comparable to undersheriff, chief criminal deputy and chief civil deputy are exempt from civil service; and in all other counties one position to be appointed by the sheriff is exempt. RCW 41.14.070. RCW 41.12.010, which provides for civil service for police of cities and towns, exempts "cities having a police force of not more than two persons including the chief of police". All of these officers—none of whom is covered by civil service—qualify under LEOFF. RCW 41.26-.030(3). The classification claimed by the majority to exclude Port police simply does not exist. To use this criterion to prevent Port police from being covered is wholly arbitrary.

Finally, the majority argues that, since port districts have authority to establish their own pension and retirement systems (RCW 53.08.170), this is a sufficient classification to meet the requirements of equal protection. It makes the observation that the legislature "may separately classify law enforcement officers and fire fighters" and then, without further analysis, states, "That the statutory objective is the same for both groups and is sought to be achieved by a single pension system does not militate against the classifications". The fundamental distinction the majority makes is not that there is a difference between a Port police officer and other law enforcement officers. In fact, it has been conceded that there is no difference between Port police and those law enforcement officers specifically authorized to be covered under RCW 41.26. Rather, the distinction is that one governmental employer, a port district, is not required to bring its employees under any state pension system coverage. RCW 41.40.410; 53.08.170. This argument might have some force except that the fire fighters for the Port

who as port employees are covered by the broad language of RCW 53.08.170 are, nevertheless, required to be members of LEOFF. Thus, the distinction as to the classifications of the employer is empty and the insistence of the majority that the treatment given fire fighters in LEOFF is of no concern to the Port police—or this court—is without force. The fact that the Port may set up its own retirement and pension system does not allow it to keep its fire fighters out of a pension system which has as its purpose:

> to provide for an actuarial reserve system for the payment of death, disability, and retirement benefits to law enforcement officers and fire fighters, and to beneficiaries of such employees, thereby enabling such employees to provide for themselves and their dependents in case of disability or death, and effecting a system of retirement from active duty.

RCW 41.26.020.

Since this "classification" of the employer does not exclude one group of its law enforcement and fire fighting employees from LEOFF, it is not a rational classification to exclude another group. There is not one system for fire fighters and another for law enforcement officers. There is only one system—LEOFF.

> *A classification "must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike." Royster Guano Co. v. Virginia, 253 U.S. 412, 415 (1920).*

(Italics mine.) *Jenkins v. State*, 85 Wn.2d 883, 888, 540 P.2d 1363 (1975).

The legislative scheme which deprives the Port police of the benefits of LEOFF is arbitrary and irrational and, therefore, is an unconstitutional legislative classification.

On this basis, I would affirm the trial court.

APPENDIX B

41.26.010 Short title. This chapter shall be known and cited as the "Washington Law Enforcement Officers' and Fire Fighters' Retirement System Act."

LEGISLATIVE HISTORY

Enacted Laws 1st Ex Sess 1969 ch 209 § 1 p 1552, effective July 1, 1969.

REVISER'S NOTE

Throughout chapter 41.26 the phrase "this act" has been changed to "this chapter". 1969 1st ex.s. c 209 consists of this chapter, RCW 41.16.145, 41.18.010 41.18.040, 41.18.045, 41.18.060, 41.18.100, 41.18.102, 41.18.104, 41.18.130. 41.18.190 , 41.20.005, 41.20.085 41.20.170, and 41.20.050 and 41.20.060, subsequently amended by 1969 1st ex.s. c 219.

41.26.020 Purpose of chapter. The purpose of this chapter is to provide for an actuarial reserve system for the payment of death, disability, and retirement benefits to law enforcement officers and fire fighters, and to beneficiaries of such employees, thereby enabling such employees to provide for themselves and their dependents in case of disability or death, and effecting a system of retirement from active duty.

LEGISLATIVE HISTORY

Enacted Laws 1st Ex Sess 1969 ch 209 § 2 p 1552, effective July 1, 1969.

41.26.030 Definitions

As used in this chapter, unless a different meaning is plainly required by the context:

(1) "Retirement system" means the "Washington law enforcement officers' and fire fighters' retirement system" provided herein.

(2)(a) "Employer" for persons who establish membership in the retirement system on or before September 30, 1977, means the legislative authority of any city, town, county or district or the elected officials of any municipal corporation that employs any law enforcement officer and/or fire fighter, any authorized association of such municipalities and, except for the purposes of RCW 41.26.150, any labor guild, association, or organization, which repre-

sents the fire fighters or law enforcement officers of at least seven cities of over 20,000 population and the membership of each local lodge or division of which is composed of at least sixty percent law enforcement officers or fire fighters as defined in this chapter.

(b) "Employer" for persons who establish membership in the retirement system on or after October 1, 1977, means the legislative authority of any city, town, county, or district or the elected officials of any municipal corporation that employs any law enforcement officer and/or fire fighter.

(3) "Law enforcement officer" means any person who is serving on a full time, fully compensated basis as a county sheriff or deputy sheriff, including sheriffs or deputy sheriffs serving under a different title pursuant to a county charter, city police officer, or town marshal or deputy marshal, with the following qualifications:

(a) No person who is serving in a position that is basically clerical or secretarial in nature and who is not commissioned shall be considered a law enforcement officer;

(b) Only those deputy sheriffs, including those serving under a different title pursuant to county charter, who have successfully completed a civil service examination for deputy sheriff or the equivalent position, where a different title is used, and those persons serving in unclassified positions authorized by RCW 41.14.070 except a private secretary will be considered law enforcement officers;

(c) Only such full time commissioned law enforcement personnel as have been appointed to offices, positions, or ranks in the police department which have been specifically created or otherwise expressly provided for and designated by city charter provision or by ordinance enacted by the legislative body of the city shall be considered city police officers; and

(d) The term "law enforcement officer" also includes the executive secretary of a labor guild, association or organization (which is an employer under RCW 41.26.030(2) as now or hereafter amended) if such individual has five years previous membership in the retirement system established in chapter 41.20 RCW: *Provided,* That for persons who establish membership in the retirement system

on or after October 1, 1977, the provisions of this subparagraph shall not apply.

(4) "Fire fighter" means:

(a) any person who is serving on a full time, fully compensated basis as a member of a fire department of an employer and who is serving in a position which requires passing a civil service examination for fire fighter, or fireman if this title is used by the department, and who is actively employed as such;

(b) anyone who is actively employed as a full time fire fighter where the fire department does not have a civil service examination;

(c) supervisory fire fighter personnel;

(d) any full time executive secretary of an association of fire protection districts authorized under chapter 52.08 RCW: *Provided,* That for persons who establish membership in the retirement system on or after October 1, 1977, the provisions of this subparagraph shall not apply;

(e) the executive secretary of a labor guild, association or organization (which is an employer under RCW 41.26-.030(2) as now or hereafter amended), if such individual has five years previous membership in a retirement system established in chapter 41.16 or 41.18 RCW: *Provided,* That for persons who establish membership in the retirement system on or after October 1, 1977, the provisions of this subparagraph shall not apply;

(f) any person who is serving on a full time, fully compensated basis for an employer, as a fire dispatcher, in a department in which, on March 1, 1970, a dispatcher was required to have passed a civil service examination for fireman or fire fighter; and

(g) any person who on March 1, 1970, was employed on a full time, fully compensated basis by an employer, and who on May 21, 1971 was making retirement contributions under the provisions of chapter 41.16 or 41.18 RCW.

(5) "Retirement board" means the Washington public employees' retirement system board established in chapter 41.40 RCW, including two members of the retirement system and two employer representatives as provided for is RCW 41.26.050. The retirement board shall be called

the Washington law enforcement officers' and fire fighters' retirement board and may enter in legal relationships in that name. Any legal relationships entered into in that name prior to the adoption of this 1972 amendatory act are hereby ratified.

(6) "Surviving spouse" means the surviving widow or widower of a member. The word shall not include the divorced spouse of a member.

(7) "Child" or "children" whenever used in this chapter means every natural born child and stepchild where that relationship was in existence prior to the date benefits are payable under this chapter, posthumous child, child legally adopted or made a legal ward of a member prior to the date benefits are payable under this chapter, and illigitimate child legitimized prior to the date any benefits are payable under this chapter, all while unmarried, and either under the age of eighteen years or mentally or physically handicapped as determined by the retirement board except a handicapped person in the full time care of a state institution. A person shall also be deemed to be a child up to and including the age of twenty years and eleven months while attending any high school, college, or vocational or other educational institution accredited, licensed, or approved by the state, in which it is located, including the summer vacation months and all other normal and regular vacation periods at the particular educational institution after which the child returns to school.

(8) "Member" means any fire fighter, law enforcement officer, or other person as would apply under subsections (3) or (4) of this section whose membership is transferred to the Washington law enforcement officers' and fire fighters' retirement system on or after March 1, 1970, and every law enforcement officer and fire fighter who is employed in that capacity on or after such date.

(9) "Retirement fund" means the "Washington law enforcement officers' and fire fighters' retirement system fund" as provided for herein.

(10) "Employee" means any law enforcement officer or fire fighter as defined in subsections (3) and (4) above.

(11)(a) "Beneficiary" for persons who established membership in the retirement system on or before September

30, 1977, means any person in receipt of a retirement allowance, disability allowance, death benefit, or any other benefit described herein.

(b) "Beneficiary" for persons who established membership in the retirement system on or after October 1, 1977, means any person in receipt of a retirement allowance or other benefit provided by this chapter resulting from service rendered to an employer by another person.

(12)(a) "Final average salary" for persons who establish membership in the retirement system on or before September 30, 1977, means (i) for a member holding the same position or rank for a minimum of twelve months preceding the date of retirement, the basic salary attached to such same position or rank at time of retirement; (ii) for any other member, including a civil service member who has not served a minimum of twelve months in the same position or rank preceding the date of retirement, the average of the greatest basic salaries payable to such member during any consecutive twenty-four month period within such member's last ten years of service for which service credit is allowed, computed by dividing the total basic salaries payable to such member during the selected twenty-four month period by twenty-four; (iii) in the case of disability of any member, the basic salary payable to such member at the time of disability retirement; (iv) in the case of a member who hereafter vests pursuant to RCW 41.26.090, the basic salary payable to such member at the time of vesting.

(b) "Final average salary" for persons who establish membership in the retirement system on or after October 1, 1977, means the monthly average of the member's basic salary for the highest consecutive sixty months of service prior to such member's retirement, termination, or death. Periods constituting authorized unpaid leaves of absence may not be used in the calculation of final average salary.

(13)(a) "Basic salary" for persons who establish membership in the retirement system on or before September 30, 1977, means the basic monthly rate of salary or wages, including longevity pay but not including overtime earnings or special salary or wages, upon which pension or retirement benefits will be computed and upon which employer contributions and salary deductions will be based.

(b) "Basic salary" for persons who establish membership in the retirement system on or after October 1, 1977, means salaries or wages earned by a member during a payroll period for personal services, including overtime payments, as reported by the employer on the wage and tax statement submitted to the federal internal revenue service, but shall exclude lump sum payments for deferred annual sick leave, unused accumulated vacation, unused accumulated annual leave, or any form of severance pay: *Provided,* That in any year in which a member serves in the legislature such member's compensation earnable shall be the greater of:

(i) the compensation earnable the member would have received had such member not served in the legislature; or

(ii) such member's actual compensation earnable received for nonlegislative public employment and legislative service combined. Any additional contributions to the retirement system required because compensation earnable under subparagraph (i) of this subsection is greater than compensation earnable under subparagraph (ii) of this subsection shall be paid by the member for both member and employer contributions.

(14)(a) "Service" for persons who establish membership in the retirement system on or before September 30, 1977, means all periods of employment for an employer as a fire fighter or law enforcement officer, for which compensation is paid, together with periods of suspension not exceeding thirty days in duration. For the purposes of this chapter service shall also include service in the armed forces of the United States as provided in RCW 41.26.190. Credit shall be allowed for all months of service rendered by a member from and after his initial commencement of employment as a fire fighter or law enforcement officer, during which he worked for ten days or more, or the equivalent thereof, or was on disability leave or disability retirement. Only months of service shall be counted in the computation of any retirement allowance or other benefit provided for in this chapter. In addition to the foregoing, for members retiring after May 21, 1971 who were employed under the coverage of a prior pension act before March 1, 1970, "service" shall include (i) such military service not exceeding five years was creditable to the

member as of March 1, 1970, under his particular prior pension act, and (ii) such other periods of service as were then creditable to a particular member under the provisions of RCW 41.18.165, 41.20.160 or 41.20.170. However, in no event shall credit be allowed for any service rendered prior to March 1, 1970, where the member at the time of rendition of such service was employed in a position covered by a prior pension act, unless such service, at the time credit is claimed therefor, is also creditable under the provisions of such prior act: *Provided,* That if such member's prior service is not creditable due to the withdrawal of his contributions plus accrued interest thereon from a prior pension system, such member shall be credited with such prior service, as a law enforcement officer or fire fighter, by paying to the Washington law enforcement officers' and fire fighters' retirement system, on or before March 1, 1975, an amount which is equal to that which was withdrawn from the prior system by such member, as a law enforcement officer or fire fighter: *Provided further,* That if such member's prior service is not creditable because, although employed in a position covered by a prior pension act, such member had not yet become a member of the pension system governed by such act, such member shall be credited with such prior service as a law enforcement officer or fire fighter, by paying to the Washington law enforcement officers' and fire fighters' retirement system, on or before March 1, 1975, an amount which is equal to the employer's contributions which would have been required under the prior act when such service was rendered if the member had been a member of such system during such period: *and provided further,* That where a member is employed by two employers at the same time, he shall only be credited with service to one such employer for any month during which he rendered such dual service.

(b) "Service" for persons who establish membership in the retirement system on or after October 1, 1977, means periods of employment by a member for one or more employers for which basic salary is earned for ninety or more hours per calendar month.

Members of the retirement system who are elected or appointed to a state elective position as defined in RCW 41.40.010(30) may elect to continue to be members of this retirement system.

Years of service shall be determined by dividing the total number of months of service by twelve. Any fraction of a year of service as so determined shall be taken into account in the computation of such retirement allowance or benefits.

If a member receives basic salary from two or more employers during any calendar year such member shall receive a total of not more than twelve months of service for such calendar year.

(15) "Accumulated contributions" means the employee's contributions made by a member plus accrued interest credited thereon.

(16) "Actuarial reserve" means a method of financing a pension or retirement plan wherein reserves are accumulated as the liabilities for benefit payments are incurred in order that sufficient funds will be available on the date of retirement of each member to pay his future benefits during the period of his retirement.

(17) "Actuarial valuation" means a mathematical determination of the financial condition of a retirement plan. It includes the computation of the present monetary value of benefits payable to present members, and the present monetary value of future employer and employee contributions, giving effect to morality among active and retired members and also to the rates of disability, retirement, withdrawal from service, salary and interest earned on investments.

(18) "Disability board" means either the county disability board or the city disability board established in RCW 41.26.110 for persons who establish membership in the retirement system on or before September 30, 1977.

(19) "Disability leave" means the period of six months or any portion thereof during which a member is on leave at an allowance equal to his full salary prior to the commencement of disability retirement. The definition contained in this subsection shall apply only to persons who establish membership in the retirement system on or before September 30, 1977.

(20) "Disability retirement" for persons who establish membership in the retirement system on or before September 30, 1977, means the period following termination of a

member's disability leave, during which the member is in receipt of a disability retirement allowance.

(21) "Position" means the employment held at any particular time, which may or may not be the same as civil service rank.

(22) "Medical services" for persons who establish membership in the retirement system on or before September 30, 1977, shall include the following as minimum services to be provided. Reasonable charges for these services shall be paid in accordance with RCW 41.26.150.

(a) Hospital expenses: These are the charges made by a hospital, in its own behalf, for

(i) Board and room not to exceed semiprivate room rate unless private room is required by the attending physician due to the condition of the patient.

(ii) Necessary hospital services, other than board and room, furnished by the hospital.

(b) Other medical expenses: The following charges are considered "other medical expenses", provided that they have not been considered as "hospital expenses".

(i) The fees of the following:

(A) A physician or surgeon licensed under the provisions of chapter 18.71 RCW;

(B) An osteopath licensed under the provisions of chapter 18.57 RCW;

(C) A chiropractor licensed under the provisions of chapter 18.25 RCW.

(ii) The charges of a registered graduate nurse other than a nurse who ordinarily resides in the member's home, or is a member of the family of either the member or the member's spouse.

(iii) The charges for the following medical services and supplies:

(A) Drugs and medicines upon a physician's prescription:

(B) Diagnostic x-ray and laboratory examinations;

(C) X-ray, radium, and radioactive isotopes therapy;

(D) Anesthesia and oxygen;

(E) Rental of iron lung and other durable medical and surgical equipment;

(F) Artificial limbs and eyes, and casts, splints, and trusses;

(G) Professional ambulance service when used to transport the member to or from a hospital when he is injured by an accident or stricken by a disease;

(H) Dental charges incurred by a member who sustains an accidental injury to his teeth and who commences treatment by a legally licensed dentist within ninety days after the accident;

(I) Nursing home confinement or hospital extended care facility:

(J) Physical therapy by a registered physical therapist;

(K) Blood transfusions, including the cost of blood and blood plasma not replaced by voluntary donors;

(L) An optometrist licensed under the provisions of chapter 18.53 RCW.

(23) "Regular interest" means such rate as the department may determine.

(24) "Retiree" for persons who establish membership in the retirement system on or before October 1, 1977, means any member in receipt of a retirement allowance or other benefit provided by this chapter resulting from service rendered to an employer by such member.

(25) "Department" means the department of retirement systems created in chapter 41.50 RCW.

(26) "Director" means the director of the department.

(27) "State actuary" means the person appointed pursuant to RCW 44.44.010(2). [Amended by Laws 1st Ex Sess 1974 ch 120 § 1, effective February 19, 1974; Laws 1st Ex Sess 1977 ch 294 § 17, effective October 1, 1977.]

Reviser's Note: The effective date of "this 1972 amendatory act" [1972 ex.s. c 131] was February 25, 1972.

Severability—1974 1st ex.s. c 120: "If any provision of this 1974 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1974 1st ex.s. c 120 § 15.]

41.26.040 System created — Membership — Funds, transfers—Amortization of unfunded liabilities

The Washington law enforcement officers' and fire fighters' retirement system is hereby created for fire fighters and law enforcement officers.

(1) All fire fighters and law enforcement officers employed as such on or after March 1, 1970, on a full time fully compensated basis in this state shall be members of the retirement system established by this chapter with respect to all periods of service as such, to the exclusion of any pension system existing under any prior act except as provided in subsection (2) of this section.

(2) Any employee serving as a law enforcement officer or fire fighter on March 1, 1970, who is then making retirement contributions under any prior act shall have his membership transferred to the system established by this chapter as of such date. Upon retirement for service or for disability or death, of any such employee, his retirement benefits earned under this chapter shall be computed and paid. In addition, his benefits uner the prior retirement act to which he was making contributions at the time of this transfer shall be computed as if he had not transferred. For the purpose of such computations, the employee's creditability of service and eligibility for service or disability retirement and survivor and all other benefits shall continue to be provided in such prior retirement act, as if transfer of membership had not occurred. The excess, if any, of the benefits so computed, giving full value to survivor benefits, over the benefits payable under this chapter shall be paid whether or not the employee has made application under the prior act. If the employee's prior retirement system was the Washington public employees' retirement system, payment of such excess shall be made by that system; if the employee's prior retirement system was the state-wide city employees' retirement system, payment of such excess shall be made by the employer which was the member's employer when his transfer of membership occurred: *Provided,* That any death in line of duty lump sum benefit payment shall continue to be the obligation of that system as provided in RCW 41.44.210; in the case of all other prior retirement systems, payment of such excess

shall be made by the employer which was the member's employer when his transfer of membership occurred.

(3) All funds held by any firemen's or policemen's relief and pension fund shall remain in that fund for the purpose of paying the obligations of the fund. The municipality shall continue to levy the dollar rate as provided in RCW 41.16-.060, and this dollar rate shall be used for the purpose of paying the benefits provided in chapters 41.16 and 41.18 RCW. The obligations of chapter 41.20 RCW shall continue to be paid from whatever financial sources the city has been using for this purpose.

(4) Any member transferring from the Washington public employees' retirement system or the state-wide city employees' retirement system shall have transferred from the appropriate fund of the prior system of membership, a sum sufficient to pay into the Washington law enforcement officers' and fire fighters' retirement system fund the amount of the employees' and employers' contributions plus credited interest in the prior system for all service, as defined in this chapter, from the date of the employee's entrance therein until March 1, 1970. Except as provided for in subsection (2), such transfer of funds shall discharge said state retirement systems from any further obligation to pay benefits to such transferring members with respect to such service.

(5) All unfunded liabilities created by this or any other section of this chapter shall be computed by the actuary in his biennial evaluation. Such computation shall provide for amortization of the unfunded liabilities over a period of not more than forty years from March 1, 1970. The amount thus computed as necessary shall be reported to the governor by the board of the retirement system for inclusion in the budget. The legislature shall make the necessary appropriations to fund the unfunded liability from the state general fund beginning with the 1971-1973 biennium. [Amended by Laws 1st Ex Sess 1973 ch 195 § 44, effective January 1, 1974; Laws 1st Ex Sess 1974 ch 120 § 7, effective February 19, 1974.]

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

41.26.070 Washington law enforcement officers' and fire fighters' retirement fund—Created—Trustees—Custodian—Retirement system expense fund—Employer reimbursement—Legislative appropriation

A fund is hereby created and established in the state treasury to be known as the Washington law enforcement officers' and fire fighters' retirement fund, and shall consist of all moneys paid into it in accordance with the provisions of this chapter, whether such moneys shall take the form of cash, securities, or other assets. The members of the retirement board shall be the trustees of these funds created by this chapter and the retirement board shall have full power to invest or reinvest these funds in the securities authorized by RCW 43.84.150 and 41.40.072: *Provided,* That the board shall authorize the state finance committee to execute all transactions in connection with the purchase, sale, or exchange of any investment that it has authorized pursuant to its statutory authority.

(1) The state treasurer shall be the custodian of all funds of the retirement system and all disbursements therefrom shall be paid by the state treasurer upon vouchers duly authorized by the retirement board and bearing the signature of the duly authorized officer of the retirement board.

(2) The state treasurer is hereby authorized and directed to deposit any portion of the funds of the retirement system not needed for immediate use in the same manner and subject to all the provisions of law with respect to the deposit of state funds by such treasurer, and all interest earned by such portion of the retirement system's funds as may be deposited by the state treasurer in pursuance of authority herewith given shall be collected by him and placed to the credit of the retirement fund or the retirement system expense fund.

(3) Into the retirement system fund shall be paid all moneys received by the retirement board, and paid therefrom shall be all refunds, adjustments, retirement allowances and other benefits provided for herein. All contributions by employers for the expense of operating the retirement system as provided for herein shall be transferred by

the state treasurer from the retirement system fund to the retirement system expense fund upon authorization of the retirement board.

(4) There is hereby utilized for the purposes of this chapter, the retirement system expense fund, as provided for in RCW 41.40.080 and from which shall be paid the expenses of the administration of this retirement system.

(5) In order to reimburse the retirement system expense fund on an equitable basis the retirement board shall ascertain and report to each employer the sum necessary to defray its proportional share of the entire expense of the administration of this chapter during the ensuing biennium or fiscal year whichever may be required. Such sum is to be computed in an amount directly proportional to the estimated entire expense of the said administration as the ratio of monthly salaries of the employer's members bears to the total salaries of all members in the entire system. It shall then be the duty of all such employers to include in their budgets or otherwise provide the amounts so required.

(6) The retirement board shall compute and bill each employer at the end of each month for the amount due for that month to the retirement system expense fund and the same shall be paid as are its other obligations. Such computation as to each such employer shall be made on a percentage rate of salary established by the board; *Provided*, That the retirement board may at its discretion establish a system of billing based upon calendar year quarters in which event the said billing shall be at the end of each such quarter.

(7) For the purpose of providing amounts to be used to defray the cost of such administration, the retirement board shall ascertain at the beginning of each biennium and request from the legislature an appropriation from the retirement system expense fund sufficient to cover estimated expenses for the said biennium.

(8) RCW 41.26.060, 41.26.070 and 41.26.085 shall take effect commencing on January 1, 1972. [Amended by Laws 1st Ex Sess 1973 ch 103 § 2, effective April 23, 1973.]

Severability—1973 1st ex.s. c 103: See note following RCW 2.10.080.

41.26.080 Funding total liability of system. The total liability of this system shall be funded as follows:

(1) Every member shall have deducted from each payroll a sum equal to six percent of his basic salary for each pay period.

(2) Every employer shall contribute monthly a sum equal to six percent of the basic salary of each employee who is a member of this retirement system. The employer shall transmit the employee and employer contributions with a copy of the payroll to the retirement system monthly.

(3) The biennial actuarial evaluation required by RCW 41.26.060(2) shall establish the total liability for this system. This liability shall be divided into current service liability and prior service liability. The contributions required by (1) and (2) above shall be applied toward the current service liability with the balance of the current service liability to be appropriated from the state general fund. The prior service liability shall be amortized over a period of not more than forty years from March 1, 1970. The amount thus computed shall be added to the current service liability to be appropriated from the state general fund.

This total amount shall be reported to the governor by the director of the retirement system, upon approval of the board, for inclusion in the budget. The legislature shall make the necessary appropriation from the state general fund to the Washington law enforcement officers' and fire fighters' retirement fund after considering the estimates as prepared and submitted. The transfer of funds from the state general fund to the retirement system shall be at a rate determined by the board of trustees on the basis of the latest actuarial valuation. The total amount of such transfers for a biennium shall not exceed the total amount appropriated by the legislature.

(4) Every member shall be deemed to consent and agree to the contribution made and provided for herein, and shall receipt in full for his salary or compensation. Payment less said contributions shall be a complete discharge of all claims and demands whatsoever for the services rendered by such person during the period covered by such pay-

ments, except his claim to the benefits to which he may be entitled under the provisions of this chapter.

LEGISLATIVE HISTORY

Enacted Laws 1st Ex Sess 1969 ch 209 § 8 p 1559, effective July 1, 1969.

41.26.085 Employee contributions to retirement system expense fund. Each employee who is a member of the retirement system on January 1, 1972 or thereafter, shall contribute two dollars and fifty cents per annum to the retirement system expense fund. Beginning January 1, 1972, and thereafter each employee entering membership shall contribute the sum of one dollar and twenty-five cents to the retirement system expense fund for the fractional portion of the semiannual period during which he enters or reenters membership: *Provided*, That beginning January 1, 1972, the expense fund contributions, as set forth in this section, shall be transferred, from each employee's accumulated contributions, to the retirement expense fund account.

Severability—1972 1st ex s c 131: See note following RCW 41.26.030.

Severability: See note following RCW 41.26.060.

LEGISLATIVE HISTORY

1. Added by Laws 1st Ex Sess 1971 ch 216 § 3, effective January 1, 1972.

2. Amended by Laws 1st Ex Sess 1972 ch 131 § 5, effective February 25, 1972, (1) omitting "Such contribution shall be made by semiannual payments of one dollar and twenty-five cents" at the beginning of the second sentence; (2) adding the proviso; and (3) omitting "Such contribution shall be deducted from each member's basic salary for the appropriate pay period" at the end of the section.

41.26.090 Retirement for service.

Retirement of a member for service shall be made by the board as follows:

(1) Any member having five or more years of service and having attained the age of fifty years shall be eligible for a service retirement allowance and shall be retired upon his written request effective the first day following the date upon which the member is separated from service.

(2) Any member having five or more years of service, who terminates his employment with any employer, may

leave his contributions in the fund. Any employee who so elects, upon attaining age fifty, shall be eligible to apply for and receive a service retirement allowance based on his years of service, commencing on the first day following his attainment of age fifty. This section shall also apply to a person who rendered service as a law enforcement officer or fire fighter, as those terms are defined in RCW 41.26.030, on or after July 1, 1969, but who was not employed as a law enforcement officer or fire fighter on March 1, 1970, by reason of his having been elected to a public office. Any member selecting this optional vesting with less than twenty years of service shall not be covered by the provisions of RCW 41.26.150, and his survivors shall not be entitled to the benefits of RCW 41.26.160 unless his death occurs after he has attained the age of fifty years. Those members selecting this optional vesting with twenty or more years service shall not be covered by the provisions of RCW 41.26.150 until the attainment of the age of fifty years: *Provided,* That a member selecting this option, with less than twenty years of service credit, who shall die prior to attaining the age of fifty years, shall have paid from the Washington law enforcement officers' and fire fighters' retirement fund, to such member's surviving spouse, if any, otherwise to such beneficiary as the member shall have designated in writing, or if no such designation has been made, to the personal representative of his estate a lump sum which is equal to the amount of such member's accumulated contributions plus accrued interest: *Provided, further,* That if the vested member has twenty or more years of service credit the surviving spouse or children shall then become eligible for the benefits of RCW 41.26-.160 regardless of his age at the time of his death, to the exclusion of the lump sum amount provided by this subsection.

(3) Any member who has attained the age of sixty years shall be retired on the first day of the calendar month next succeeding that in which said member shall have attained the age of sixty and may not thereafter be employed as a law enforcement officer or fire fighter: *Provided,* That for any member who is elected or appointed to the office of sheriff, chief of police, or fire chief, his election or appointment shall be considered as a waiver of the age sixty provision for retirement and nonemployment for whatever

number of years remain in his present term of office and any succeeding periods for which he may be so elected or appointed: *Provided further,* That the provisions of this subsection shall not apply to any member who is employed as a law enforcement officer or fire fighter on March 1, 1970. [Amended by Laws 1st Ex Sess 1977 ch 294 § 22, effective October 1, 1977.]

41.26.120 Retirement for disability

Any member, regardless of his age or years of service may be retired by the disability board, subject to approval by the retirement board as hereinafter provided, for any disability which has been continuous since his discontinuance of active service and which renders him unable to continue his service, whether incurred in the line of duty or not. No disability retirement allowance shall be paid until the expiration of a period of six months after the disability is incurred during which period the member, if found to be physically or mentally unfit for duty by the disability board following receipt of his application for disability retirement, shall be granted a disability leave by the disability board and shall receive an allowance equal to his full monthly salary and shall continue to receive all other benefits provided to active employees from his employer for such period. However, if, at any time during the initial six-month period, the disability board finds the beneficiary is no longer disabled, his disability leave allowance shall be canceled and he shall be restored to duty in the same rank or position, if any, held by the beneficiary at the time he became disabled. Applications for disability retirement shall be processed in accordance with the following procedures:

(1) Any member who believes he is or is believed to be physically or mentally disabled shall be examined by such medical authority as the disability board shall employ, upon application of said member, or a person acting in his behalf, stating that said member is disabled, either physically or mentally: *Provided,* That no such application shall be considered unless said member or someone in his behalf, in case of the incapacity of a member, shall have filed the application within a period of one year from and after the discontinuance of service of said member.

(2) If the examination shows, to the satisfaction of the disability board, that the member is physically or mentally disabled from the further performance of duty, and that such disability has been continuous from the discontinuance of active service, the disability board shall enter its written decision and order, accompanied by appropriate findings of fact and by conclusions evidencing compliance with this chapter as now or hereafter amended, granting the member a disability retirement allowance; otherwise, if the member is not found by the disability board to be so disabled, the application shall be denied pursuant to a similar written decision and order, subject to appeal to the retirement board in accordance with RCW 41.26.200: *Provided,* That the disability board shall make a finding of whether or not the disability was incured in line of duty.

(3) Every order of a disability board granting a disability retirement allowance shall forthwith be reviewed by the retirement board for the purposes of determining (a) whether the facts as found by the disability board are supported by substantial evidence in the record, except the finding of whether or not the disability was incurred in line of duty; and (b) whether the order is in accordance with law on the basis of such facts. If an affirmative determination is made by the retirement board on both of the aspects of the decision and order, it shall be affirmed; otherwise, it shall be reversed and remanded to the disability board for such further proceedings as the retirement board may direct.

(4) Every member who can establish, to the disability board, that he is physically or mentally disabled from the further performance of duty and that such disability will be in existence for a period of at least six months may waive the six-month period of disability leave and be immediately granted a disability retirement allowance, subject to the approval of the state board as provided in subsection (3) above. [Amended by Laws 1st Ex Sess 1974 ch 120 § 10, effective February 19, 1974.]

41.26.150 Sick or disability benefits—Medical services

(1) Whenever any active member, or any member hereafter retired, on account of service, sickness or disability, not caused or brought on by dissipation or abuse, of which the disability board shall be judge, is confined in any hos-

pital or in his home, and whether or not so confined, requires medical services, the employer shall pay for such active or retired member the necessary medical services not payable from some other source as provided for in subsection (2). In the case of active or retired fire fighters the employer may make the payments provided for in this section from the firemen's pension fund established pursuant to RCW 41.16.050 where such fund had been established prior to March 1, 1970: *Provided,* That in the event the pension fund is depleted, the employer shall have the obligation to pay all benefits payable under chapters 41.16 and 41.18 RCW: *Provided further,* That the disability board in all cases may have the active or retired member suffering from such sickness or disability examined at any time by a licensed physician or physicians, to be appointed by the disability board, for the purpose of ascertaining the nature and extent of the sickness or disability, the physician or physicians to report to the disability board the result of the examination within three days thereafter. Any active or retired member who refuses to submit to such examination or examinations shall forfeit all his rights to benefits under this section for the period of such refusal: *And provided further,* That the disability board shall designate the medical services available to any sick or disabled member.

(2) The medical services payable under this section will be reduced by any amount received or eligible to be received by the member under workmen's compensation, social security including the changes incorporated under Public Law 89-97 as now or hereafter amended, insurance provided by another employer, other pension plan, or any other similar source. Failure to apply for coverage if otherwise eligible under the provisions of Public Law 89-97 as now or hereafter amended shall not be deemed a refusal of payment of benefits thereby enabling collection of charges under the provisions of this chapter.

(3) Upon making such payments as are provided for in subsection (1), the employer shall be subrogated to all rights of the member against any third party who may be held liable for the member's injuries or for the payment of the cost of medical services in connection with a member's sickness or disability to the extent necessary to recover the amount of payments made by the employer.

(4) Any employer under this chapter, either singly, or jointly with any other such employer or employers through an association thereof as provided for in chapter 48.21 RCW, may provide for all or part of one or more plans of group hospitalization and medical aid insurance to cover any of its employees who are members of the Washington law enforcement officers' and fire fighters' retirement system, and/or retired former employees who were, before retirement, members of said retirement system, through contracts with regularly constituted insurance carriers or with health care service contractors as defined in chapter 48.44 RCW. Benefits payable under any such plan or plans shall be deemed to be amounts received or eligible to be received by the active or retired member under subsection (2) of this section. [Amended by Laws 1st Ex Sess 1974 ch 120 § 11, effective February 19, 1974.]

41.26.450 Employer, member, and state contributions

The required contribution rates to the retirement system for members, employers, and the state of Washington shall be established by the director from time to time as may be necessary upon the advice of the state actuary.

The member, the employer and the state shall each contribute the following shares of the cost of the retirement system:

Member	50%
Employer	30%
State	20%

Any adjustments in contribution rates required from time to time for future costs shall likewise be shared proportionally by the members, employers, and the state: *Provided,* That the costs of amortizing the unfunded supplemental present value of the retirement system, in existence on September 30, 1977, shall be borne in full by the state.

Any increase in the contribution rate required as the result of a failure of the state or of an employer to make any contribution required by this section shall be borne in full by the state or by that employer not making the contribution.

The director shall notify the retirement board of any pending adjustment in the required contribution rate and such increase shall be announced at a board meeting held at least thirty days prior to the effective date of the change.

Members' contributions required by this section shall be deducted from the members basic salary each payroll period. The members contribution and the employers contribution shall be remitted directly to the department within fifteen days following the end of the calendar month during which the payroll period ends.

Until such time as the director shall establish other rates, members, employers of such members, and the state shall each contribute the following percentages of basic salary:

Member	8.14%
Employer	4.88%
State	3.28%

In addition, the state shall initially contribute an additional twenty percent of basic salary per member to amortize the unfunded supplemental present value of the retirement system in effect on September 30, 1977. (Added by Laws 1st Ex Sess 1977 ch 294 § 6, effective October 1, 1977.]

Legislative direction and placement—Section headings—1977 1st ex.s. c 294: See notes following RCW 41.26.400.

APPENDIX C

53.04.060 District declared formed. Within five days after an election held under the provisions of RCW 53.04-.020, the board of county commissioners shall canvass the returns, and if at such election a majority of the voters voting upon the proposition shall vote in favor of the formation of the district, the board of county commissioners shall so declare in its canvass of the returns of such election, and the port district shall then be and become a municipal corporation of the state of Washington and the name of such port district shall be "Port of ....." (inserting the name appearing on the ballot).

LEGISLATIVE HISTORY

Enacted Laws 1959 ch 17 § 2 p 49. Based on Laws 1911 ch 92 § 3 p 414, as amended by Laws 1913 ch 62 § 2 p 204.
See RRS § 9690.

APPENDIX D

34.04.130 Contested cases—Judicial review

(1) Any person aggrieved by a final decision in a contested case, whether such decision is affirmative or negative in form, is entitled to judicial review therof only under the provisions of this 1967 amendatory act, and such person may not use any other procedure to obtain judicial review of a final decision, even though another procedure is provided elsewhere by a special statute or a statute of general application. Where the agency's rules provide a procedure for rehearing or reconsideration, and that procedure has been invoked, the agency decision shall not be final until the agency shall have acted thereon.

(2) Proceedings for review under this chapter shall be instituted by filing a petition in the superior court, at the petitioner's option, for (a) Thurston county, (b) the county of the petitioner's residence or principal place of business, or (c) in any county where the property owned by the petitioner and affected by the contested decision is located. The petition shall be served and filed within thirty days after the service of the final decision of the agency. Copies of the petition shall be served upon the agency and all parties of record. If a timely petition is filed any party of record not filing or joining in the first petition who wants relief from the decision must join in the petition or serve and file a cross-petition within twenty days after service of the first petition or thirty days after service of the final decision of the agency, whichever period of time is longer. The court, in its discretion, may permit other interested persons to intervene.

(3) The filing of the petition shall not stay enforcement of the agency decision. Where other statutes provide for stay or supercedeas of an agency decision, it may be stayed by the agency or the reviewing court only as provided therein; otherwise the agency may do so, or the reviewing court may order a stay upon such terms as it deems proper.

(4) Within thirty days after service of the petition, or within such further time as the court may allow, the agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under re-

view; but, by stipulation of all parties to the review proceeding, the record may be shortened. Any party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs. The court may require or permit subsequent corrections or additions to the record when deemed desirable.

(5) The review shall be conducted by the court without a jury and shall be confined to the record, except in cases of alleged irregularities in procedure before the agency, not shown in the record, testimony thereon may be taken in the court. The court shall, upon request, hear oral argument and receive written briefs.

(6) The court may affirm the decision of the agency or remand the case for further proceedings; or it may reverse the decision if the substantial rights of the petitioners may have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

(a) in violation of constitutional provisions; or

(b) in excess of the statutory authority or jurisdiction of the agency; or

(c) made upon unlawful procedure; or

(d) affected by other error of law; or

(e) clearly erroneous in view of the entire record as submitted and the public policy contained in the act of the legislature authorizing the decision or order; or

(f) arbitrary or capricious. [Amended by Laws 1967 ch 237 § 6, effective July 1, 1977; Laws 1st Ex Sess 1977 ch 52 § 1.]

Reviser's Note: "this 1967 amendatory act" [1967 c 237] is codified as RCW 34.04.010, 34.04.020, 34.04.022, 34.04.025, 34.04.027, 34.04.055, 34.04.057, 34.04.060, 34.04.090, 34.04.105, 34.04.115, 34.04.130, 34.04.150, 34.04.170, 34.04.901, 34.04.910, 34.04.921, 34.04.931, 34.04.940, 48.03.070, 48.04.010, 48.04.040, 48.04.090, 48.52.060, 66.08.150, and 82.32.130. Section 7, chapter 237, Laws of 1967 (RCW 34.04.150) was later amended, and sections 21 and 22, chapter 237, Laws of 1967 (uncodified) were repealed, by chapter 71, Laws of 1967 extraordinary session.

49 Wn LR 447 (Shoreline Management Act; permit procedure).

49 Wn LR 533 (State Environmental Policy Act of 1971; judicial review of compliance with the Act).

APPENDIX E

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY

AUTOMOBILE DRIVERS & DEMONSTRATORS UNION LOCAL No. 882 and PORT OF SEATTLE POLICE OFFICERS, *Petitioners,* v. DEPARTMENT OF RETIREMENT SYSTEMS OF THE STATE OF WASHINGTON, *Respondent.*	NO. 835730 PETITION FOR REVIEW OF ADMINISTRATIVE ORDER

COME NOW Automobile Drivers & Demonstrators Union Local No. 882 and the Port of Seattle Police Officers, Petitioners herein, and pursuant to R.C.W. 34.04.130 respectfully show the Court as follows:

1. Venue and jurisdiction is conferred upon this Court by R.C.W. 34.04.130(2).

2. Local 882 is a labor organization within the meaning of R.C.W. 41.56.080 and is the collective bargaining representative of Police Officers employed by the Port of Seattle, a municipal corporation of the State of Washington. The Port of Seattle Police Officers are members of Local 882, are employed by the Port of Seattle as law enforcement officers, and are residents of the State of Washington.

3. The Department of Retirement Systems (hereinafter referred to as the "Department") is an administrative agency of the State of Washington established pursuant to R.C.W. 41.26.050.

4. The Petitioners were applicants in a contested proceeding for membership in the Law Enforcement Officers and Firefighters Retirement System, which proceeding was identified by the Department as Docket No. 32.

5. A hearing on the application of the Petitioners was held by the Department on July 22, 1977.

6. On September 19, 1977, the Department entered a decision in said proceeding; a true and correct copy of which is attached hereto as Exhibit A and by this reference expressly incorporated herein.

7. Neither R.C.W. 41.26.220 nor the Rules and Regulations of the Department provide a procedure for a rehearing of the Department's decision.

8. The Department's decision of September 19, 1977, has prejudiced the Petitioners' substantive rights and Petitioners are aggrieved thereby.

9. Petitioners hereby petition the above-captioned Court for a review of the decision entered by the Department on July 22, 1977, and respectfully show the Court:

(1) The decision of the Department is in violation of the Fourteenth Amendment, Section 1, of the United States Constitution, and Article I, Section 12 of the Constitution of the State of Washington, in that it denies Petitioner the equal protection of the laws in that Petitioners are law enforcement officers whose duties are identical to police officers covered by R.C.W. 41.26.

(2) The Law Enforcement Officers and Firefighters Retirement (LEOFF) Act violates the Fourteenth Amendment, Section 1, of the United States Constitution, and Article I, Section 12, of the Washington State Constitution, in that it denies Petitioners the equal protection of the laws.

(3) That the decision of the Department is unsupported by its interpretation of R.C.W. 41.26.030 in view of the entire record as submitted.

(4) The decision of the Department was arbitrary and capricious in that the Department failed to include the Port of Seattle Police Officers within the classifications set forth in R.C.W. 41.26.030(3).

WHEREFORE, Petitioners pray:

1. That this Court proceed to review the decision of the Department in the manner provided in R.C.W. 34.04.130;

2. That this Court reverse the decision of the Department; and

3. That this Court grant such other and further relief as it may deem just and proper.

DATED this 13th day of October, 1977.

Respectfully submitted,

VANCE, DAVIES, ROBERTS,
REID & ANDERSON

/s/ RUSSELL J. REID
BY RUSSELL J. REID

/s/ JAMES R. B. SALTER
BY JAMES R. B. SALTER
Of Attorneys for Petitioners

STATE OF WASHINGTON }
COUNTY OF KING } ss.

RUSSELL J. REID, being first duly sworn, on oath deposes and says:

That I am one of the attorneys for the Petitioners and am authorized to and make this verification for and on their behalf; that I have read the foregoing Petition for Review of Administrative Order, know the contents thereof and believe the same to be true.

/s/ RUSSELL J. REID

SUBSCRIBED AND SWORN to before me this 13th day of October, 1977.

/s/ JAMES R. B. SALTER
NOTARY PUBLIC in and for the State of Washington, residing at Seattle

APPENDIX F

IN THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR KING COUNTY

AUTOMOBILE DRIVERS & DEMONSTRATORS UNION NO. 882 and PORT OF SEATTLE POLICE OFFICERS, *Petitioners,* v. DEPARTMENT OF RETIREMENT SYSTEMS OF THE STATE OF WASHINGTON, *Respondent.*	NO. 835730 ORDER GRANTING PETITIONER'S MOTION FOR SUMMARY JUDGMENT AND DENYING RESPONDENT'S MOTION FOR SUMMARY JUDGMENT

This matter came on for hearing on cross motions for summary judgment before the Honorable Horton J. Smith on June 8, 1978. The petitioner was represented by Herman L. Wacker and the respondent by Wayne L. Williams. The court considered the arguments of both parties, their memoranda in support of their respective motions for summary judgment, and the entire administrative record certified to the court for the proceedings before the duly designated hearing examiner of the Department of Retirement Systems, Mr. Lloyd G. Baker. Based upon the foregoing, the court makes the following conclusions:

1. There is no material issue of fact herein.

2. The petitioners are entitled to the relief sought in their motion for summary judgment as a matter of law.

It is therefore ordered that the petitioners' motion for

summary judgment be granted, and that the respondent's motion for summary judgment be denied.

s/ HORTON SMITH
JUDGE

Presented by:
VANCE, DAVIES, ROBERTS,
REID & ANDERSON

/s/ HERMAN L. WACKER
HERMAN L. WACKER
Of Attorneys for Petitioners

Approved as to Form and
Notice of Presentation Waived:

/s/ WAYNE L. WILLIAMS
WAYNE L. WILLIAMS
Of Attorneys for Respondent

APPENDIX G

IN THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR KING COUNTY

AUTOMOBILE DRIVERS & DEMONSTRATORS UNION NO. 882 and PORT OF SEATTLE POLICE OFFICERS, *Petitioners,* v. DEPARTMENT OF RETIREMENT SYSTEMS OF THE STATE OF WASHINGTON, *Respondent.*	NO. 835730 JUDGMENT

This matter came on for hearing on cross motions for summary judgment before the Honorable Horton J. Smith on June 8, 1978. The petitioner was represented by Herman L. Wacker and the respondent by Wayne L. Williams. The court being fully advised;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. The decision of the Department of Retirement Systems hearing examiner, Mr. Lloyd G. Baker, is hereby reversed.

2. It is hereby ordered that the Department of Retirement Systems grant the Port of Seattle police officers admission into the Law Enforcement Officers' and Fire Fighters' Retirement System established by RCW 41.26, effective either January 1, 1972 or the first date subsequent thereto when they qualified, as a law enforcement officer, all conditioned upon their meeting all other requirements

to which are a prerequisite to membership in the LEOFF Retirement System.

DATED this ..... day of June, 1978.

s/ HORTON SMITH
JUDGE HORTON SMITH

Presented by:
VANCE, DAVIES, ROBERTS,
REID & ANDERSON

/s/ HERMAN L. WACKER
HERMAN L. WACKER
Of Attorneys for Petitioners

Approved as to Form and
Notice of Presentation Waived:

/s/ WAYNE L. WILLIAMS
WAYNE L. WILLIAMS
Of Attorneys for Respondent

APPENDIX H

IN THE SUPREME COURT OF
THE STATE OF WASHINGTON

AUTOMOBILE DRIVERS & DEMONSTRATORS UNION LOCAL No. 882 and PORT OF SEATTLE POLICE OFFICERS, *Respondents,* v. DEPARTMENT OF RETIREMENT SYSTEMS OF THE STATE OF WASHINGTON, *Appellant.*	MANDATE NO. 45706 KING COUNTY NO. 835730

The State of Washington to:

The Superior Court of the State of
Washington in and for King County

This is to certify that the opinion of the Supreme Court of the State of Washington filed on August 2, 1979, became the decision terminating review of this court in the above entitled case on August 29, 1979. This cause is mandated to the superior court from which the appeal was taken for further proceedings in accordance with the attached true copy of the opinion.

Pursuant to Rule of Appellate Procedure 14.3, costs are taxed as follows:

$102.79 in favor of appellant and against respondents.

cc:
Hon. Slade Gorton
Attorney General

Mr. Wayne L. Williams, Asst.
Vance, Davies, Roberts, Reid
& Anderson

Mr. Herman L. Wacker
Reporter of Decisions

je

[SEAL] IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court at Olympia, this 23rd day of August, A. D. 1979

/s/ JOHN J. CHAMPAGNE
JOHN J. CHAMPAGNE
Clerk of the Supreme Court,
State of Washington

APPENDIX I

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

AUTOMOBILE DRIVERS AND DEMONSTRATORS UNION LOCAL NO. 882 and PORT OF SEATTLE POLICE OFFICERS, *Respondents,* v. DEPARTMENT OF RETIREMENT SYSTEMS OF THE STATE OF WASHINGTON, *Appellant.*	No. 45706

NOTICE OF APPEAL TO THE SUPREME COURT
OF THE UNITED STATES

I. Notice is hereby given that Automobile Drivers and Demonstrators Union Local No. 882 and Port of Seattle Police Officers, the Respondents above named, hereby appeal to the Supreme Court of the United States from the final judgment of this court reversing the decision of the King County Superior Court which declared RCW 41.26.030(3) to be unconstitutional because of its exclusion of Port of Seattle police officers from the Law Enforcement Officers and Firefighters Retirement System established by RCW 41.26, which reversal was entered in this action and became the decision terminating review of the Supreme Court of the State of Washington on August 29, 1979.

This appeal is taken pursuant to 28 USC §1257(2).

II. The Clerk will please prepare a transcript of the record in this cause, for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript the following:

1. All Clerk's papers and exhibits.

2. The Opinion of the Supreme Court filed on August 6, 1979 in this matter.

3. Mandate.

III. The following questions are presented by this appeal:

Does a statute of the State of Washington, RCW 46.21-.030(3), which has been construed by the Supreme Court of the State of Washington to exclude police officers employed by a port district in the State of Washington from a statewide disability and retirement plan for law enforcement officers and firefighters employed by various governmental entities within the State of Washington deny the excluded port district employed police officers the equal protection of the laws guaranteed them by the Fourteenth Amendment to the United States Constitution?

VANCE, DAVIES, ROBERTS,
REID & ANDERSON

/s/ RUSSEL J. REID
RUSSELL J. REID
Rm. 425, No. Tower
100 West Harrison Plaza
Seattle, Washington 98119

PROOF OF SERVICE

I, Herman L. Wacker, an attorney in the office of Messrs. Vance, Davies, Roberts, Reid & Anderson, attorneys of record for Automobile Drivers & Demonstrators Union Local No. 882 and Port of Seattle Police Officers, Respondent herein, depose and say that on the 30th day of August, 1979 I served a copy of the foregoing Notice of Appeal to the Supreme Court of the United States on Department of Retirement Systems of the State of Washington, Appellant herein, by depositing a copy of said Notice of Appeal to the Supreme Court of the United States in the

United States Mail, postage prepaid addressed to:

Slade Gorton, Attorney General
Wayne L. Williams, Assistant
Matt Coyle, Assistant
101 Insurance Building
Olympia, Washington 98504

/s/ HERMAN L. WACKER
HERMAN L. WACKER

SUBSCRIBED AN SWORN TO before me, at Seattle, Washington this 30th day of August, 1979.

/s/ KACIE CHAPMAN
NOTARY PUBLIC in and for the State of Washington, residing at Tacoma.

APPENDIX J

TEAMSTER'S LOCAL UNION NO. 882

(Letterhead)

July 14, 1976

MR. LLOYD G. BAKER, Director
Law Enforcement Officers' and Fire
Fighter's REtirement System
Capitol Plaza Building
Olympia, Washington

Dear Mr. Baker:

We represent the Port of Seattle police officers who have requested our office to file a formal application with The Washington Law Enforcement Officers' and Fire Fighters' Retirement System, that the Port of Seattle police officers be included under that system.

It is the position of the Port of Seattle police officers that they meet all the criteria necessary to be included under the "Washington Law Enforcement Officers' and Fire Fighters' Retirement System Act", R.C.W. 41.26.010 et seq.

The Port of Seattle is an "Employer" as that term is defined in R.C.W. 41.26.030(2), since it is both a "district" and a municipal corporation".

Effective April 8, 1975, the Port of Seattle police department is a recognized law enforcement agency with full police power. Its jurisdiction includes all Port of Seattle properties, both in and around the Sea-Tac Airport and the Seattle Waterfront area. Presently it consists of 95 officers.

The Port of Seattle police meet the definition contained in R.C.W. 41.26.030(3) of "Law enforcement officer" (" 'Law enforcement officer' means any person who is serving on a full time, fully compensated basis as a . . . city police officer, . . .") since they are employed as police officers on a full time, fully compensated basis by a "municipal corporation", which is synonymous in meaning to a "city". The duties of the Port of Seattle police department officers are identical to those of other police departments throughout the State of Washington who are currently covered under the Wash-

ington Law Enforcement Officers' and Fire Fighters' Retirement System Act.

An early reply to this application will be greatly appreciated.

Sincerely,

/s/ E. J. "JIM" CLARK
E. J. ("JIM") CLARK
Secretary-Treasurer

Larry Wheeler, Personnel Director
Port of Seattle

APPENDIX K

PORT OF SEATTLE
P.O. Box 1209 / Seattle, Washington 98111
(Letterhead)

July 16, 1976

Mr. Lloyd G. Baker, Director
Public Employees' Retirement System
Post Office Box 918
Olympia, WA 98504

Dear Mr. Baker:

We have received our copy of Mr. Clark's letter of July 14, 1976 to you, applying for LEOFF System coverage for Port police officers.

The Port has unsuccessfully attempted on a number of occasions in the past to obtain LEOFF System coverage for its police officers. Our General Manager, Eldon Opheim, has reaffirmed with me today that he desires such coverage for this employee group.

The Port therefore supports Teamsters Local Union No. 882 in its request for LEOFF System coverage for Port police officers.

Sincerely,

/s/ LARRY R. WHEELER
LARRY R. WHEELER
Director of Personnel and
Industrial Relations

ms

cc: Jim Clark
J. Eldon Opheim
Richard D. Ford
Richard D. Mohn
James L. Hogan
Don Shay
Neil Moloney

APPENDIX L

BEFORE THE DIRECTOR OF
THE DEPARTMENT OF RETIREMENT SYSTEMS

In re the application of THE PORT OF SEATTLE POLICE OFFICERS for membership in the LEOFF System	Docket #32 335730 ADMIN-ISTRATIVE ORDER

FINDINGS OF FACT

This case comes on as an administrative appeal by the Port of Seattle police officers from a decision by the Department of Retirement Systems denying them membership in the Washington Law Enforcement Officers' and Fire Fighters' Retirement System.

A formal hearing was held on July 22, 1977 at which time facts were entered into evidence outlining the duties of the Port of Seattle police officers. The evidence consisted of testimony of Officer LaBissoniere, who testified to his duties and those of other police officers that are identical with those of other local and city police officers on duty throughout the state. The Department of Retirement Systems does not dispute the duties of the Port of Seattle police officers and the fact that they are identical with deputy sheriffs and city and county police officers performing these similar services.

CONCLUSIONS OF LAW

The issue in this case is presented before the Department by request of the Port of Seattle police officers for admission in the Law Enforcement Officers' and Fire Fighters' Retirement System.

RCW 41.26.030(2) defines the term "employer" as follows:

> "'Employer' means the legislative authority of any city, town, county or district or the elected officials of any municipal corporation that employs any law enforcement officer and/or fire fighter, any authorized

association of such municipalities, and, except for the purposes of RCW 41.26.150, any labor guild, association, or organization, which represents the fire fighters or law enforcement officers of at least seven cities of over 20,000 population and the membership of each local lodge or division of which is composed of at least sixty percent law enforcement officers or fire fighters as defined in this chapter."

It is clear that the Port of Seattle is a municipal corporation, and employs fire fighters which are entitled to coverage in the Law Enforcement Officers' and Fire Fighters' Retirement System (LEOFF).

The problem arises with RCW 41.26.030(3) which defines the term "law enforcement officer" as follows:

"'Law enforcement officer' means any person who is serving on a full time, fully compensated basis as a county sheriff or deputy sheriff, including sheriffs or deputy sheriffs serving under a different title pursuant to a county charter, city police officer, or town marshal or deputy marshal, with the following qualification:

"(a) No person who is serving in a position that is basically clerical or secretarial in nature, and who is not commissioned shall be considered a law enforcement officer;

"(b) Only those deputy sheriffs, including those serving under a different title pursuant to county charter, who have successfully completed a civil service examination for deputy sheriff or the equivalent position, where in a different title is used, and those persons serving in unclassified positions authorized by RCW 41.14.070 except a private secretary will be considered law enforcement officers;

"(c) Only such full time commissioned law enforcement personnel as have been appointed to offices, positions, or ranks in the police department which have been specifically created or otherwise expressly provided for and designated by city charter provision or by ordinance enacted by the legislative body of the city shall be considered city police officers; and

"(d) The term 'law enforcement officer' also includes the executive secretary of a labor guild, association

or organization (which is an employer under RCW 41.25.030(2) as now or hereafter amended) if such individual has five years previous membership in the retirement system established in chapter 41.20 RCW."

The conclusion is that the individuals in question are not "a county sheriff or deputy sheriff", they are not a "city police officer or town marshal or deputy marshal".

They are not encompassed by the definition of law enforcement officer. In addition thereto, city police officers in subsection (3) includes a further qualification that their position has to be "expressly provided for and designated by *city charter provisions* or by ordinance enacted by the legislative body of the city". Therefore, the Port of Seattle does not qualify under the foregoing statutory provisions.

The petitioner raises a constitutional question stating that failure of the Department to include the Port of Seattle Police Deparment within the LEOFF System denies them equal protection of the law in violation of Amendment 14 of the United States Constitution and Article 1, Section 12 of the Washington State Constitution.

It is a well established rule, supported by a legion of cases, that a state agency has no jurisdiction to determine the constitutionality of the statutes under which it operates. A determination that a statute is unconstitutional is a judicial determination and beyond the jurisdiction of an administrator of a state agency.

ORDER

NOW, THEREFORE, IT IS ORDERED That the decision denying the request of the Port of Seattle police officers for admission in the Law Enforcement Officers' and Fire Fighters' Retirement System is hereby affirmed, in that there is simply no way for these law enforcement officers to qualify under the act.

DATED this 19th day of September, 1977.

/s/ ROBERT L. HOLLISTER, JR.
ROBERT L. HOLLISTER, JR.,
Director, Department of Retirement Systems

Supreme Court, U. S.
FILED
JAN 3 1980
MICHAEL RODAK, JR., CLERK

NO. 79-834

IN THE

SUPREME COURT

OF THE

UNITED STATES

OCTOBER TERM, 1979

AUTOMOBILE DRIVERS & DEMONSTRATORS UNION LOCAL No. 382, ET AL.,

APPELLANTS,

v.

THE DEPARTMENT OF RETIREMENT SYSTEMS OF THE STATE OF WASHINGTON,

APPELLEE.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF WASHINGTON

MOTION TO DISMISS

SLADE GORTON
ATTORNEY GENERAL
MATTHEW J. COYLE
ASST. ATTORNEY GENERAL

OFFICE & POST OFFICE ADDRESS:
TEMPLE OF JUSTICE
OLYMPIA, WASHINGTON 98504
TELEPHONE: (206) 753-6215

NO. 79-834

IN THE

SUPREME COURT

OF THE

UNITED STATES

OCTOBER TERM, 1979

AUTOMOBILE DRIVERS & DEMONSTRATORS
UNION LOCAL No. 882, ET AL.,
APPELLANTS,

v.

THE DEPARTMENT OF RETIREMENT
SYSTEMS OF THE
STATE OF WASHINGTON,
APPELLEE.

ON APPEAL FROM THE
SUPREME COURT OF THE
STATE OF WASHINGTON

MOTION TO DISMISS

SLADE GORTON
ATTORNEY GENERAL
MATTHEW J. COYLE
ASST. ATTORNEY GENERAL

OFFICE & POST OFFICE ADDRESS:
TEMPLE OF JUSTICE
OLYMPIA, WASHINGTON 98504
TELEPHONE: (206) 753-6215

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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1979

No. 79-834

AUTOMOBILE DRIVERS & DEMONSTRATORS
UNION LOCAL No. 882, ET AL.,
APPELLANTS,

V.

THE DEPARTMENT OF RETIREMENT
SYSTEMS OF THE
STATE OF WASHINGTON,
APPELLEE.

ON APPEAL FROM THE
SUPREME COURT OF THE
STATE OF WASHINGTON

MOTION TO DISMISS

The appellee moves the Court to dimiss the appeal herein on the ground that it is manifest that the questions on which the decision of the cause

depend are so unsubstantial as not to need further argument.

I.

ARGUMENT

The case presents no substantial question not previously decided by this court.

It is well established that states are afforded a wide scope of discretion in enacting laws which classify groups of citizens differently from others without running afoul of the equal protection clause of the 14th Amendment to the United States Constitutuion. Where "fundamental rights" or "suspect classifications" are not involved, the classification will be upheld unless it is wholly irrelevant to the achievement of a legitimate state objective. McGowan v. Maryland, 366 U.S. 420 (1961);

New Orleans v. Dukes, 427 U.S. 297 (1976). A classification will not be set aside if any state of facts reasonably may be conceived to justify it. McGowan, supra.

Here, the classification is for purposes of membership in a state-wide retirement system for law enforcement officers and fire fighters. In Washington, retirement and pension benefits granted to public employees are deferred compensation for services rendered. Bakenhus v. City of Seattle, 48 Wn.2d 695, 296 P.2d 536 (1956). Thus, not surprisingly, there is no claim that this case involves "fundamental rights" or a "suspect classification". Rather, the sole claim is that the classification is wholly irrelevant to the accomplishment of a legitimate state purpose.

The Washington State Supreme Court correctly analyzed the case before it when it stated:

> "The relevant inquiry then is whether reasonable grounds may be conceived for distinquishing between police officers who fall within the statutory definition of 'law enforcement officer' and port police officers, performing functionally identical duties, who do not."

J.S.App. A-9. Eight members of the court found that there were reasonable distinctions. Among the distinctions found by the court was the fact that at the time of the creation of the pension system in question in 1970, port police officers were not fully commissioned police officers. At the time port police officers became fully commissioned, legislative experience with funding the retirement system may well have made it imprudent or prohibitively costly to include port

police. Similarly, port districts have the authority to establish their own pension and retirement systems (RCW 53.08.170) a factor which the legislature may have concluded to militate against including port police in the deferred compensation program of the state.

In this connection, appellants seem to claim that because they are fully commissioned police officers performing duties identical to those of city police and county sheriffs, they are entitled to a specific form of deferred compensation, i.e., membership in the LEOFF pension system. However, not all fully commissioned "law enforcement officers" in Washington are members of the LEOFF system. One of the largest groups of Washington law

enforcement officers, the Washington State Patrol, have their own separate retirement system with pension benefits substantially different from those afforded members of the LEOFF system. See, Chapter 43.43 RCW. Similarly, the fully commissioned police officers employed by the two major state universities, the University of Washington and Washington State University, are members of the Washington State Public Employees Retirement System, Chapter 41.40 RCW. Thus, in Washington, the legislature has never intended that "law enforcement officer"--defined in terms of "duties"--is to be a generic classification for pension purposes.

Another distinction found by the court deals with the territorial responsibilities of port police. County and city law enforcement officers'

territorial jurisdiction is widespread, whereas port police jurisdiction is confined to the territorial area of port property. J.S.App. A-9.

Finally, although the "functional" duties of port police officers may be identical with those of county and city law enforcement officers, the "risk factor" in performing those duties may not be the same. For example, the most dangerous situation faced by city and county police officers is the resolution of domestic disputes. It is highly likely, and the legislature may have perceived, that port police, given their limited territorial jurisdiction, are unlikely to face domestic disputes on a routine basis. Given that port police first became fully commissioned police officers in 1974 (Laws of 1974, 1st Ex. Sess., Chapter 62, §1, codified

as RCW 53.08.280), the legislature may have wished to refrain from permitting port police membership in the LEOFF system until sufficient experience had been accumulated detailing the actual dangers and injury rate experienced by port police. There is no requirement that the classification be perfectly free from discrimination. The legislature may tackle one problem at a time. Williamson v. Lee Optical of Oklahoma, Inc., 348 U.S. 483 (1954).

In sum, this is a "garden variety" "minimal scrutiny" equal protection case. Eight members of the Washington State Supreme Court, well versed in local law and conditions, determined that the exclusion of port police officers from membership in the LEOFF retirement system was

rationally related to the accomplishment of a legitimate legislative purpose. One member concluded that it was not. Thus, this case presents no substantial federal question. The class of people affected is minimal, the law governing the case is clear and undisputed, and the result reached by the Washington State Supreme Court is correct.

II.

CONCLUSION

Wherefore, appellee respectfully submits that the question upon which this cause depends is so unsubstantial as not to need further argument, and

appellee respectfully moves the Court to dismiss this appeal.

DATED this 31ST day of DECEMBER, 1979.

Respectfully submitted,

SLADE GORTON
Attorney General

MATTHEW J. COYLE
Assistant Attorney General

Counsel for Appellee